

IN THE SUPREME COURT OF OHIO

Cummins Property Services, LLC,

Appellee.

Case No. 07-0195
Appeal from the Ohio
Board of Tax Appeals
Case No. 2005-R-591

Vs.

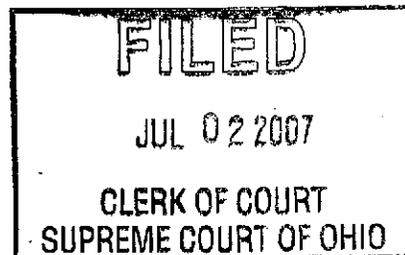
Franklin County Board of Revision ,

Appellee

And

Worthington City Schools Board of
Education,

Appellant.



**REPLY BRIEF OF APPELLEE, CUMMINS
PROPERTY SERVICES, LLC.**

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Proposition of Law:

Where the Record before the BTA clearly demonstrates that a property has been the subject of a recent arms-length sale, the sales price shall be deemed the best evidence of value for taxation purposes and a determination of the BTA fixing the value of the property at such arms-length sales price shall be affirmed absent reliable evidence to the contrary. 2, 3

Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision, 106 Ohio St. 3d 269, 2005-Ohio-4979 3

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STATEMENT OF FACTS

This Appeal is before the Court upon a Notice of Appeal filed by the Worthington Board of Education from a Decision and Order of the Ohio Board of Tax Appeals in the Matter of **Cummins Property Services, LLC vs. Franklin County Board of Revision , et al., (January 5, 2007), Ohio BTA Case No. 2005-R-591**. A Copy of the BTA Decision is appended hereto.

In the hearing before the Board of Tax Appeals ("BTA), Robert Ray Cummins, Jr. testified for Appellant. Mr. Cummins is the sole individual owning any interest in the Appellant limited liability company (Hearing Record "HR" at page 11), and testified that he purchased the subject property which is located at 50 Lazelle Road. (HR. 11-12).

Mr. Cummins testified that he was interested in finding suitable office space for his wife, a physician, and looked for appropriate space in the area. The subject property had been vacant and for sale for approximately four years (HR. 12) and he looked at the property and contacted the real estate broker selling the property and also hired a broker to represent him

(HR. 12-13). A purchase agreement was entered into on or about April 2, (HR. 13), and the purchase was consummated in August 2002(HR. 14). Exhibit A, in the transcript from the BTA, is a copy of the Conveyance Statement showing a purchase price of \$385,000 [the value decided upon by the BTA for the Tax Year 2003]. The record is clear the parties involved in the sale were not related and that all of the *indicia* that the sale was made at arms-length are present.

At both the board of revision and BTA, the documents relating to the sale were in evidence and at no time did either the County Appellees nor the Appellant , Worthington Board of Education, present any evidence to rebut the arms-length sale price (agreed to just months before the tax lien date) .

Based on the only evidence of record, and the sworn testimony of he purchaser, the BTA decided that the fair market value was best evidenced by the sale price for the Tax Year 2003.

LEGAL ARGUMENT:

Proposition of Law: Where the record before the BTA clearly demonstrates that property has been the subject of a recent arms-length sale, the

sales price shall be deemed the best evidence of value for taxation purposes and a determination of the BTA fixing the valuation of the property at such arms-length price shall be affirmed absent reliable evidence to the contrary. *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Reision, 106 Ohio St 3d 269, 2005-Ohio-4979, 834 N.E. 2d 782* ; Revised Code 5713.03; *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision, 108 Ohio St 3d 310, 2006-Ohio-1059* approved and followed.

In the present matter, much like the statement of facts in *Lakota, supra.*, none of the evidence [and/or , parenthetically, the testimony of the buyer] was refuted by either the county or Board of Education. In *Lakota, Supra*, the only possible characteristic of the sale that might be questioned was the element of seller financing, however, since the Board of Education presented no evidence, the Ohio supreme Court held the sales price determinative. There is simply no evidence to support the Appellant's contentions. All of the objections of the Board of Education ("Worthington"), are unsupported as to a valuation of the subject property. Worthington wants the Court to ignore the recent arms-length sale as well as the BTA decision without ever having adduced any evidence.

The BTA dealt with Worthington's objections and detailed (pages 7 and 8 of the BTA decision appended) why there simply was not any reason or evidence in support of the contentions. Worthington argued by way of brief before the BTA that subsequent changes to the property to make what was a vacant bank building which was empty and unsold for four years had an effect, but as found by the BTA at pages 6 and 7 no evidence was presented by the board of education as to any possible effect that may have had on what the BTA specifically found was a recent arms-length sale of the property. As the BTA noted at page 7 of its decision and order, "Once a recent, arms-length sale has been established, it is the responsibility of the party contesting the sale price to prove that the value of the subject property is something different. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Edn. (1994), 68 Ohio St. 3d 493; Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision (1988), 37 Ohio St. 3d 318.*" (BTA Decision and Order at 7 & 8, citation added).

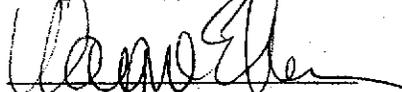
Appellant does not contest the arms-length nature of the sale nor the fact that the sale was recent, having been consummated several months prior

to the tax lien date. What Appellant's sole complaint is predicated upon was fully dealt with by the BTA and the lack of evidence to support Worthington's objections to the sale as the best (and only) evidence.

CONCLUSION

There is no demonstrable error in the BTA Decision and Order nor is said decision, in any respect, unreasonable and/or unlawful. The final determination is fully in accord with recent pronouncements of this Court and should be affirmed.

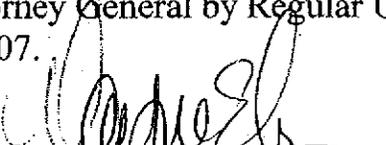
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CERTIFICATE OF SERVICE

A copy of the foregoing Brief of Appellant was served upon all Counsel of Record and the Attorney General by Regular U.S. mail, Postage prepaid, this 2nd day of July, 2007.



Wayne E. Petkovic



OHIO BOARD OF TAX APPEALS

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

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Entered JAN 5 2007

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

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

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

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

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

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

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

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

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

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

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

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

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

13.

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

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

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

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

Assn v. Franklin Cty. Bd. of Revision (1995), 73 Ohio St.3d 710.

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

"The county auditor, from the best sources of information available, shall determine, as nearly as practicable, *the true value* of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon ***. *** In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price *** to be the true value for taxation purposes." (Emphasis added.)

In *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175

Ohio St. 410, the Supreme Court of Ohio addressed the manner by which the value of real estate is to be ascertained:

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

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

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

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

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

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

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

**LAKOTA LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, APPELLEE, v.
BUTLER COUNTY BOARD OF REVISION ET AL., APPELLEES;
BONDO CORPORATION, APPELLANT.**

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

Real-property taxation — True value — R.C. 5713.03 — Recent arm's-length sale is best evidence of value — Although it had the burden of proof before the board of revision, the board of education failed to present evidence to show that recent sale was not an arm's-length sale. Thus, the Board of Tax Appeals erred in ruling in the board of education's favor.

(No. 2005-0090 — Submitted November 30, 2005 — Decided March 22, 2006.)

APPEAL from the Board of Tax Appeals, No. 2003-A-1840.

LUNDBERG STRATTON, J.

{¶ 1} Appellant, Bondo Corporation, challenges the value assigned to its real property by the Board of Tax Appeals (“BTA”) for tax year 2002. The property — identified in the Butler County Auditor’s records as parcel numbers M5620-183-000-002, M5620-183-000-003, and M5620-183-000-004 — contains an industrial and warehouse facility and covers approximately five acres of land on Devitt Drive in West Chester Township.

{¶ 2} For tax year 2002, the county auditor fixed the true value of the property at \$1,878,740. Bondo asked the Butler County Board of Revision to reduce that valuation, arguing that the property was worth only \$950,000 that year. The Board of Education of the Lakota Local School District in turn asked the board of revision to leave the auditor’s valuation unchanged.

{¶ 3} The board of revision determined that the true value of the property was \$1,134,000, which prompted the board of education to file an appeal under R.C. 5717.01 with the BTA. The board of education urged the BTA in a written brief to set the value of the property at the \$1,878,740 amount originally set by the county auditor, while Bondo asked the BTA to set the property's value at \$950,000, citing the October 2003 sale of the property for that price. The parties agreed to waive a hearing before the BTA.

{¶ 4} The BTA concluded that insufficient evidence had been presented by Bondo to justify the reduction in value ordered by the board of revision, and the BTA therefore reversed the decision of the board of revision and directed the county auditor to again set the value of the property at \$1,878,740.

{¶ 5} Bondo has now appealed to this court. For the reasons that follow, we reverse the BTA's decision.

{¶ 6} "When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, 566, 740 N.E.2d 276.

{¶ 7} At the hearing before the board of revision, Bondo Corporation presented evidence of a recent arm's-length sale as best evidence of value, pursuant to R.C. 5713.03.

{¶ 8} That evidence included a limited-warranty deed, a seller's closing statement, and the first four pages of the real-property purchase agreement. Bondo also presented evidence that the sale was seller-financed. The submitted pages of the purchase agreement state:

{¶ 9} "Article 2 – Purchase Price

{¶ 10} "Buyer shall pay the sum of One Million One Hundred Thirty-Four Thousand Dollars (\$1,134,000.00) (the 'Purchase Price') allocating Nine Hundred

Fifty Thousand Dollars (\$950,000) to the value of the Real Property and One Hundred Eighty-Four Thousand Dollars (\$184,000) to interest charges and carrying costs for the Seller provided financing in accordance with the terms of this Agreement, which Purchase Price Shall be payable to Seller for the Real Property * * * .”

{¶ 11} The seller’s closing statement also listed \$1,134,000 as the “Combined Purchase Price.”

{¶ 12} A review of the transcript of the board of revision hearing demonstrates that the board of revision also examined other factors to determine whether the sale was an arm’s-length transaction. The board of revision determined that the real estate commission was five percent. Board of revision member Fred Bounds stated: “There is a real estate commission paid, so that indicates there was some kind of a meaningful transaction.”

{¶ 13} None of this evidence was contested or refuted by the board of education. The documents were accepted without objection. The board of education presented no evidence that the “Combined Purchase Price” of \$1,134,000 was not the result of an arm’s-length transaction between a willing buyer and a willing seller. There was no evidence presented about any side deals or other relationships between the buyer and the seller. The only questionable characteristic about this sale was that the sale was seller-financed, but the board of education presented no evidence that such financing resulted in anything other than an arm’s-length transaction. The record reflects no objections – based on authenticity, competency of the witness, completeness of the record, or otherwise – by the board of education. Board of revision member Bounds even invited the parties to bring up anything further before closing the hearing. Neither side did.

{¶ 14} The BTA acknowledged that the board of education – the appellant before the BTA – bore the burden of proving a value different from the one set by the board of revision and also acknowledged that the “best evidence of true value

is the actual sale of the property in an arm's-length transaction." *Conalco, Inc. v. Monroe Cty. Bd. of Revision* (1977), 50 Ohio St.2d 129, 130, 4 O.O.3d 309, 363 N.E.2d 722. However, based upon speculation only, the BTA reversed the board of revision. The BTA questioned whether the sale price was a result of a true arm's-length transaction, noting that part of the price had been allocated to the purchase of the property and part to the financing charges.

{¶ 15} While acknowledging that the burden of proof was on the board of education, the BTA actually shifted that burden back to Bondo by questioning the details of the seller financing, even though the board of education had not challenged that evidence at the board of revision hearing, nor had it presented any new evidence that the seller financing in any way resulted in anything other than an arm's-length transaction. If the board of education suspected that a side arrangement existed or that the financing terms were not market-based, it should have challenged the evidence, asked for a full copy of the purchase agreement, and/or presented its own expert as to the inequities. Mere speculation is not evidence.

{¶ 16} Bondo contends that the BTA should not have ruled in the board of education's favor, given that the board of education, as the appellant before the BTA, had the burden of proof and yet presented no witnesses or other evidence. We agree with Bondo that the board of education did not meet its burden of proof before the BTA and that therefore the BTA erred when it ruled in the board of education's favor.

{¶ 17} In addition, our recent decision 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, requires a reversal of the BTA decision, which was reached on December 17, 2004, almost ten months before *Berea* was decided.

{¶ 18} In *Berea*, the court overruled two earlier decisions that had allowed boards of revision and the BTA to consider evidence rebutting the presumption

that the arm's-length sale price reflected true value. *Id.* at ¶ 13. In interpreting R.C. 5713.03, the court stated:

{¶ 19} “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, we concluded: ‘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. This, without question, will usually determine the monetary value of the property.’ ” *Berea*, 106 Ohio St.3d 269, 2005-Ohio-4979, 834 N.E.2d 782, ¶ 9.

{¶ 20} The court then discussed *Ratner v. Stark Cty. Bd. of Revision* (1986), 23 Ohio St.3d 59, 23 OBR 192, 491 N.E.2d 680 (“*Ratner I*”), in which the court held:

{¶ 21} “In determining true value for property, the board of revision and the BTA must at least consider and review evidence presented by independent real estate appraisers that adjusts the contract sale price to reflect both the price paid for real estate and the price paid for favorable financing.” *Id.* at 62, 23 OBR 192, 491 N.E.2d 680.

{¶ 22} In reassessing the plain language of R.C. 5713.03, the court determined in *Berea* that *Ratner I* had strayed from the statutory mandate, and therefore we overruled *Ratner I*:

{¶ 23} “In accordance with the plain language of R.C. 5713.03 and our decision in [*Columbus Bd. of Edn. v. Fountain Square Assoc. Ltd.* (1984), 9 Ohio St.3d 218, 9 OBR 528, 459 N.E.2d 894], today we overrule *Ratner I* and [*Ratner v. Stark Cty. Bd. of Revision* (1988), 35 Ohio St.3d 26, 517 N.E.2d 915 (*Ratner II*)] to the extent that they direct the board of revision and the BTA to ‘consider and review evidence presented by independent real estate appraisers that adjusts the contract sale price to reflect both the price paid for real estate and the price paid for favorable financing,’ *Ratner I*, 23 Ohio St.3d at 62, 23 OBR 192, 491

{¶ 27} I concur in judgment.

{¶ 28} Nevertheless, I disagree with the majority's decision to endorse, once again, an unnecessarily rigid approach to the valuation of real property. See *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, ¶17 (Pfeifer, J., concurring in judgment only). In doing so, the majority ignores R.C. 5715.01 and prohibits tax authorities from following that statute's mandate to consider "all facts and circumstances relating to the value of the property." Accordingly, I concur in judgment only.

Ennis, Roberts & Fischer and C. Bronston McCord III, for appellee Board of Education of the Lakota Local School District.

Siegel, Siegel, Johnson & Jennings Co., L.P.A., Erin K. Rooney, and J. Kieran Jennings, for appellant.

In The Matter Of:

*Cummins Property Services v.
Franklin County Board of Revision*

*Hearing
March 15, 2006*

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Word Index included with this Min-U-Script®

[1] BEFORE THE BOARD OF TAX APPEALS
 [2] STATE OF OHIO
 [3]
 [4] Cummins Property)
 [5] Services, LLC,)
 [6] Appellant,)
 [7] vs.) Case No. 2005-R-591
 [8] Franklin County Board of)
 [9] Revision, et al.,)
 [10] Appellees.)
 [11]
 [12] Hearing Room A
 [13] State Office Tower
 [14] 30 East Broad Street
 [15] 24th Floor
 [16] Columbus, Ohio 43215
 [17] Wednesday, March 15, 2006
 [18] Met, pursuant to assignment, at 9:00
 [19] o'clock a.m.
 [20] BEFORE:
 [21] Susan M. Hollanshead, Attorney-Examiner
 [22]
 [23]
 [24]
 [25]

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[1] PROCEEDINGS
 [2]
 [3] Wednesday, March 15, 2006
 [4] Morning Session
 [5]
 [6] THE EXAMINER: This is the hearing before
 [7] the Board of Tax Appeals, State of Ohio, relative
 [8] to an appeal styled Cummins Property Services,
 [9] LLC, Appellant, versus Franklin County Board of
 [10] Revision, Appellee, Board of Tax Appeals No.
 [11] 2005-R-591. It is being heard in Hearing Room A
 [12] in the offices of the Board of Tax Appeals on the
 [13] 24th floor of the State Office Tower, 30 East
 [14] Broad Street, Columbus, Ohio, on March 15th, 2006
 [15] at approximately 9:06 a.m. This is pursuant to
 [16] assignment before Susan M. Hollanshead,
 [17] Attorney-Examiner for the Board of Tax Appeals.
 [18] The Notice of this Appeal was filed with
 [19] this board on June 9th, 2005. This is an appeal
 [20] from a decision of the Franklin County Board of
 [21] Revision issued May 2nd, 2005, and mailed by
 [22] Certified mail to the Appellant on May 13th, 2005.
 [23] In that final determination, the Board of Revision
 [24] found value as of the tax lien date of January
 [25] 1st, 2003.

(1) Will the Appellant's representative
 (2) please enter an appearance by name, mailing
 (3) address and telephone number?
 (4) **MR. PETKOVIC:** Yes, your Honor. If it
 (5) please the Board, my name is Wayne Petkovic. My
 (6) office address is 840 Brittany Drive, Delaware,
 (7) Ohio 43015. My phone number is
 (8) (740) 362-7729.

(9) **THE EXAMINER:** Thank you, Mr. Petkovic.
 (10) Will the Board of Education's
 (11) representative please enter an appearance by name,
 (12) mailing address and telephone number?

(13) **MR. GILLIS:** Yes, thank you. My name is
 (14) Mark Gillis from the law firm of Rich, Crites &
 (15) Dittmer, 300 East Broad Street, Suite 300,
 (16) Columbus, Ohio. Telephone number with area code
 (17) is (614) 228-5822. I'm here on behalf of the
 (18) Board of Education and the Worthington City
 (19) Schools.

(20) **THE EXAMINER:** Will the Appellee County's
 (21) representative please enter an appearance by name,
 (22) mailing address and telephone number?

(23) **MR. STEHLE:** Thank you. My name is Bill
 (24) Stehle, Assistant Prosecuting Attorney, Franklin
 (25) County, 373 South High Street, Columbus, Ohio

(1) Cummins, who is the Principal and the entity that
 (2) owns the property, and he is the gentlemen that
 (3) negotiated the sale and acquisition of the subject
 (4) property.

(5) With regard to the subject property, it
 (6) is approximately a 3,000-square-foot building
 (7) located at 50 Lazelle Road. It originally was the
 (8) U.S.B. Bank. The testimony and evidence will show
 (9) that that was empty and marketed on the open
 (10) market for a period of approximately three years.

(11) Mr. Cummins will describe in detail his
 (12) negotiations with regard to the acquisition of
 (13) that. It was a sale, and the listing was handled
 (14) from the grantor's aspect by a commercial broker
 (15) who tried for three years, basically, to get
 (16) somebody to buy the building.

(17) The evidence will show that, number one,
 (18) the sale was recent, the terms of the tax lien
 (19) date, that there was the absence of any compulsion
 (20) or duress with regard to the acquisition of that
 (21) property, that it was openly and freely negotiated
 (22) on the open market, and that the price paid was
 (23) agreed on by the parties, concomitant with that
 (24) negotiation. And it's our position with regard to
 (25) the status of Ohio laws, as well as recent

(1) 43215. Phone number is (614) 462-3520, on behalf
 (2) of the Board of Revision.

(3) **THE EXAMINER:** Thank you. Prior to going
 (4) on the record, I discussed with counsel that there
 (5) were no outstanding written motions that needed to
 (6) be addressed prior to proceeding to the merits of
 (7) this case.

(8) Is that your understanding, Mr. Petkovic?

(9) **MR. PETKOVIC:** Yes, your Honor.

(10) **THE EXAMINER:** And yours, Mr. Gillis?

(11) **MR. GILLIS:** Yes, it is.

(12) **THE EXAMINER:** And yours, Mr. Stehle?

(13) **MR. STEHLE:** Yes, it is.

(14) **THE EXAMINER:** Then at this point in
 (15) time, Mr. Petkovic, if you have any opening
 (16) remarks, you may make them.

(17) **MR. PETKOVIC:** Yes, your Honor. I'll be
 (18) very brief.

(19) The testimony in evidence we intend to
 (20) introduce this morning, the — essentially, it was
 (21) all contained within the Statutory Transcript.
 (22) There's an Exhibit A, which is the Purchase
 (23) Agreement with regard to the subject property.

(24) The testimony and evidence we have to
 (25) present will be the testimony of Mr. Robert

(1) determinations of the Board of Tax Appeals, and
 (2) the case out of the Supreme Court that the best
 (3) evidence is that recent arm's-length sale of the
 (4) property, which was consummated approximately four
 (5) months prior to the tax lien date.

(6) The only witness we have this morning is
 (7) Mr. Robert Cummins. I have provided to counsel
 (8) copies of all the documents that we intend to
 (9) refer or reference to in this particular hearing,
 (10) all of which are contained in the Statutory
 (11) Transcript.

(12) And Mr. Gillis, if you would have no
 (13) objection if I give you a time-stamped copy?

(14) **MR. GILLIS:** By all means.

(15) **MR. PETKOVIC:** The only exhibit in that
 (16) instance we intend to introduce in this particular
 (17) hearing is a copy of the real estate conveyance
 (18) form. I've got a Certified copy from the
 (19) Department.

(20) And what is the Board's wishes with
 (21) regard to how that would be marked as an exhibit?

(22) **THE EXAMINER:** Let's have that marked
 (23) as A.

(24) **MR. PETKOVIC:** Might I suggest that maybe
 (25) for clarifying purposes if we use a number because

[1] the Board of Revision has used their exhibits in
[2] letters?

[3] **THE EXAMINER:** Okay. That's fine.

[4] **MR. GILLIS:** Well, let's use letters
[5] because your exhibits are letters and if I
[6] introduce anything —

[7] **THE EXAMINER:** So we're back to A,
[8] correct?

[9] **MR. PETKOVIC:** Okay. We're back to A.

[10] **THE EXAMINER:** Off the record.

[11]
[12] Thereupon, Appellant's Exhibit A was
[13] marked for purposes of identification.

[14]
[15] **THE EXAMINER:** All right. We're back on
[16] the record. Mr. Petkovic, you may continue.

[17] **MR. PETKOVIC:** I have concluded to any
[18] remarks that I would have with regard to opening
[19] remarks.

[20] **THE EXAMINER:** Thank you, Mr. Petkovic.

[21] Mr. Gillis, do you have any opening
[22] remarks?

[23] **MR. GILLIS:** The Board of Education will
[24] waive opening remarks.

[25] **MR. STEHLE:** Mr. Stehle, do you have any

[1] opening remarks?

[2] **MR. STEHLE:** The County waives, as well.

[3] **THE EXAMINER:** Okay.

[4] Then, Mr. Petkovic, at this time, you may
[5] call your first witness.

[6] **MR. PETKOVIC:** Your Honor, if it please
[7] the Board, I'd like to call Mr. Robert Cummins.

[8] **THE EXAMINER:** Mr. Cummins, would you
[9] please approach the witness stand. Would you
[10] raise your right hand to be sworn?

[11] (Witness placed under oath.)

[12] **THE EXAMINER:** Thank you. You may be
[13] seated.

[14] And, Mr. Petkovic, you may now examine
[15] the witness.

[16] **MR. PETKOVIC:** Your Honor, may I please
[17] have the Statutory Transcript?

[18] **THE EXAMINER:** Sure.

[19] **MR. PETKOVIC:** Thank you.

[20]

[21]

[22]

[23]

[24]

[25]

[1] **ROBERT RAY CUMMINS, JR.**

[2] of lawful age, being first duly placed under oath,
[3] as prescribed by law, was examined and testified
[4] as follows:

[5] **DIRECT EXAMINATION**
[6] **BY MR. PETKOVIC:**

[7] **Q:** Sir, would you please state your full
[8] name for the Board?

[9] **A:** Robert Ray Cummins, Jr.; Cummins is
[10] C-u-m-m-i-n-s.

[11] **Q:** And what is your relationship with regard
[12] to Cummins Property Services, LLC?

[13] **A:** I'm the owner of it. I think I'm called
[14] the Manager, but the sole owner.

[15] **Q:** You're the sole owner —

[16] **A:** Sole owner.

[17] **Q:** — of the LLC?

[18] Now, Mr. Cummins, did you have occasion
[19] to, on behalf of your company, acquire a property
[20] at 50 Lazelle Road?

[21] **A:** Yes, I did.

[22] **Q:** Could you please give the Board a brief
[23] description of its physical characteristics.

[24] **A:** The building at 50 Lazelle Road was a
[25] bank building that sat vacant for several years.

[1] It's approximately 3,000 feet. And we were
[2] looking for some office/medical office space in
[3] that immediate vicinity.

[4] We looked at quite a few things. There's
[5] a lot of vacancies in the area. We looked at the
[6] renting space. And we this saw building and chose
[7] it to purchase it.

[8] **Q:** Okay. Now, sir, for clarification
[9] purposes, when you've referred to "we were
[10] looking", to whom were you making reference?

[11] **A:** My wife's a physician. Her name is
[12] Elizabeth Cummins. And we were looking for
[13] medical space in that area for her.

[14] **Q:** So this building is currently being used
[15] as her medical office?

[16] **A:** Correct.

[17] **Q:** Now, I'd like for you to describe to the
[18] Board your negotiations in terms of acquiring this
[19] property?

[20] **A:** Like I said, the building, we'd seen the
[21] building. It was an area we were looking to
[22] purchase something. There was — It had been for
[23] sale for a long time, I believe, four years.

[24] We called — in fact, I called the
[25] broker. And we looked at it. And I got a broker

A-21

(1) involved on my end. We made an offer to purchase,
 (2) and we did.
 (3) Q: Okay. Sir, with regard to that offer to
 (4) purchase, did you enter into a Purchase Agreement?
 (5) A: Yes, I did.
 (6) Q: Okay. Do you recall, sir, under what
 (7) date that would've been entered into?
 (8) A: April — And this is a guess — April
 (9) 2nd, 2003.
 (10) Q: Sir, I'd like to hand you a document
 (11) marked as Exhibit A in the Statutory Transcript
 (12) and ask if you can identify that document.
 (13) A: That is the document, yes.
 (14) Q: And that's the Purchase Agreement that
 (15) you entered into to acquire this property?
 (16) A: Yes. Yes, it is.
 (17) Q: Sir, do you have any business
 (18) relationship, family relationship or any other
 (19) type of economic relationship with the seller of
 (20) this property?
 (21) A: The seller was U.S. Bank. It was also
 (22) known as Star Bank at one time, and First Star.
 (23) At one time, I had a checking account there. And
 (24) I still have a credit card there, but, no, there's
 (25) no direct relationship with them.

(1) the closing.
 (2) Q: Okay. And that's the closing you
 (3) attended?
 (4) A: Yes.
 (5) Q: Okay. And that document was the required
 (6) form in order for the deed to be filed on this
 (7) property?
 (8) A: Well, my attorney would've filed it
 (9) out — filed it, but I believe so.
 (10) Q: And that memorializes the fact that you
 (11) paid \$385,000 for the subject property?
 (12) A: Including an undivided one-half interest
 (13) in the adjoining parcel.
 (14) Q: Okay. Now, I'd like for you to describe
 (15) for the Board what's around this building and how
 (16) it's configured in terms of its surroundings.
 (17) A: There are — It's — The address is 50
 (18) Lazelle Road. It's near Route 23. And there's a
 (19) Wendy's next door to it, on 23 — at the corner of
 (20) 23 and Lazelle Road. And there's a United Dairy
 (21) Farmers next to the Wendy's. And we're — And
 (22) there's a fourth parcel there that's a parking
 (23) lot. That's shared between Wendy's and our office
 (24) building because both Wendy's and our office
 (25) building have fairly limited parking. And to the

(1) Q: Okay. And were you compelled to buy this
 (2) property by any economic — Well, were you
 (3) compelled to buy this property in terms of
 (4) settling any type of lawsuit or any type of
 (5) judgment? Did you have other alternatives in
 (6) order to find office space for Dr. Cummins?
 (7) A: No.
 (8) Q: Now, you were given a period of time in
 (9) which to do your due diligence with regard to this
 (10) property?
 (11) A: Yes, I was.
 (12) Q: Okay. And you completed that?
 (13) A: Yes. Yes, I did.
 (14) Q: And do you recall when you would've
 (15) closed on this property?
 (16) A: It took several months. I believe,
 (17) August of 2003, but it's a guess, once again.
 (18) MR. PETKOVIC: Approach the witness, your
 (19) Honor?
 (20) THE EXAMINER: Uh-huh.
 (21) BY MR. PETKOVIC:
 (22) Q: Mr. Cummins, I'd like to hand you a
 (23) document marked as Exhibit A. Can you identify
 (24) that document?
 (25) A: Looks like the Conveyance Statement from

(1) east, there's a retirement home.
 (2) Q: Now, with regard to this small six-tenths
 (3) of an acre parcel of the shared parking, did your
 (4) due diligence indicate why that was and how that
 (5) came to be?
 (6) A: Well, I don't know the legal aspect of
 (7) it, but I believe they originally built the
 (8) buildings, you know, neither Wendy's nor Star
 (9) Bank, or whatever it was called at the time, had
 (10) enough parking. I mean, parking is very tight.
 (11) In our six-tenths of a parcel lot, parking's very
 (12) tight and it fills up almost immediately.
 (13) Both parcels really needed that parking
 (14) lot. I don't know if it was legally required at
 (15) the time or not, but I —
 (16) Q: Title to that lot is in the name of R.L.
 (17) Richards Trustee, is it not?
 (18) A: That is correct.
 (19) Q: Now, do you know who R.L. Richards
 (20) Trustee is?
 (21) A: I believe it's the family of Dave Thomas,
 (22) of Wendy's. Their kids, I believe, own that
 (23) trust. And Wendy's sold the restaurants, maybe 16
 (24) restaurants in Central Ohio, to the kids in the
 (25) family a couple of years ago.

(1) Q: And they took title under the name of a
(2) trustee entity?

(3) A: Yes.

(4) Q: Okay. Now, when you acquired this
(5) property and when you negotiated to buy it, you
(6) were aware that there was an undivided interest in
(7) this other parcel that's in somebody else's name
(8) for parking purposes?

(9) A: Correct.

(10) Q: Is it your understanding that, legally,
(11) neither party can put any physical structures on
(12) that building, that it's required as parking?

(13) A: That's correct.

(14) Q: Now, you are issued a separate tax bill
(15) for your undivided interest; are you not?

(16) A: No, I'm not.

(17) Q: Okay. You're billed by R. L. Richards
(18) Trustee?

(19) A: Yes.

(20) Q: Were you served with a notice that the
(21) Board of Education had filed a Complaint with
(22) regard to the transfer of that Wendy's property to
(23) R.L. Richards as Trustee?

(24) MR. GILLIS: I'm going to object. It's
(25) irrelevant to the case at hand. It's a separate

(1) Board of Revision case. It's already been
(2) decided. It has no relevance to the value of the
(3) subject property here today.

(4) THE EXAMINER: Response?

(5) MR. PETKOVIC: Well, your Honor, I
(6) anticipate that part of the rebuttal with regard
(7) to this arm's-length sale is that something more,
(8) or whatever, was transferred along with this
(9) property. Simple Algebra would indicate that if
(10) you have just one parcel in issue and you paid
(11) \$385,000 for it and also received an undivided
(12) interest, the parcel in issue alone would be
(13) somewhat less than the 385,000, but we're not
(14) making that assertion.

(15) THE EXAMINER: Okay. Mr. Stehle, do you
(16) want to make a comment on this?

(17) MR. STEHLE: I have no position on this.
(18) Thank you.

(19) THE EXAMINER: Anything further,
(20) Mr. Gillis?

(21) MR. GILLIS: Not with regard to this,
(22) other than the fact that I'm not sure he's
(23) addressed the objection and its relevance in this
(24) case and the value of the subject property.

(25) THE EXAMINER: Do you have anything else,

(1) Mr. Petkovic?

(2) MR. PETKOVIC: No, your Honor.

(3) THE EXAMINER: I'm going to overrule your
(4) objection; however, the Board will take it into
(5) consideration and how much weight to give it.

(6) MR. GILLIS: For the record, I would like
(7) to get another objection, and my records indicate
(8) that Mr. Cummins was not present at the Board of
(9) Revision hearing. He has already testified now
(10) with regard to his negotiations and purchase of
(11) the subject property. However, 57515.19(G)
(12) arguably would be precluded in that. But any new
(13) testimony with regards to other properties at this
(14) point, and it is, certainly, within the purview of
(15) that statute and would require good cause as to
(16) why it was presented below.

(17) THE EXAMINER: Mr. Petkovic?

(18) MR. PETKOVIC: Your Honor, Mr. Cummins
(19) was unavailable and the Board of Revision was
(20) reluctant to extend the date to a time when he was
(21) available.

(22) THE EXAMINER: Was a continuance
(23) requested in that case?

(24) MR. PETKOVIC: I believe so.

(25) MR. GILLIS: I can address that. The

(1) case was originally scheduled for December 15th,
(2) 2004, pursuant to counsel's request for a
(3) continuance. It was granted. And a second
(4) hearing was set for January 26th and was
(5) continued, once again, until May 2nd, which is
(6) when the case was actually heard.

(7) So there were two continuances in this
(8) case, yet Mr. Cummins still did not appear before
(9) the Board of Revision.

(10) THE EXAMINER: Any other comment,
(11) Mr. Petkovic?

(12) MR. PETKOVIC: The other thing I would
(13) indicate to the Board — And I'm quoting from a
(14) recent decision of the Ohio Supreme Court, the
(15) January term, 2006, specifically, Higbee Company
(16) versus Scioto County Board of Revision and the
(17) City of Strongsville. It was determined by the —
(18) or, decided by the Supreme Court on November 9th,
(19) 2005 — or, it was decided by the Supreme Court on
(20) January 4th, 2006. It's an appeal from the Board
(21) of Tax Appeals.

(22) And therein at Page 4, the Supreme Court
(23) indicates as follows in its procurium opinion:
(24) While the rules of evidence are not applicable to
(25) the Board of Tax Appeals, we have held that any

(1) rules may guide the Board and BTA in conducting
(2) its hearings." They quote Owens City School
(3) District versus Cuyahoga County Board of Revision,
(4) 74 Ohio State Third 415.

(5) They follow with indications that,
(6) "Strict adherence of those rules, this is simply
(7) to amplify the documents that have already been
(8) provided to the Board."

(9) I would also indicate that in a recent
(10) decision of this Board, as well as other
(11) decisions, this Board has indicated that once
(12) concise evidence is presented with regard to a
(13) sale of real estate, the burden of proof shifts to
(14) whomever, or whatever, entity would be
(15) antagonistic to that sale as being the best
(16) evidence.

(17) In this particular instance, we provided
(18) the Conveyance Form, which is, as this Board well
(19) knows, has been, oftentimes, the sole evidence
(20) adduced by a school board with a regard to a
(21) transfer of property and values were increased
(22) incombinent with that Conveyance Form. And this
(23) Board has approved those circumstances, unless
(24) there's evidence showing the best sale was not
(25) arms-length.

(1) put, is not a rule of evidence. It's a statute.
(2) And the Supreme Court has held and, in fact, has
(3) overturned this Board in allowing testimony when
(4) there isn't good cause shown for why it wasn't
(5) presented to the Board below.

(6) With regard to the presumption of — that
(7) an arm's-length sale is the best evidence of
(8) value, the Board of Education would assert that in
(9) the case where the property owner, who in this
(10) matter, is the sole holder of all of the facts
(11) with regard to the arm's-length nature, with the
(12) fee-simple nature of that sale, the presumption
(13) shouldn't be applied if they aren't present to
(14) testify at the Board of Revision. They have all
(15) the facts. Nobody else has any of the facts.

(16) When a Board of Education presents a
(17) Conveyance Fee Statement and Deed, they don't have
(18) any other facts or any other way to get those
(19) facts. And so the presumption arises and it is
(20) the burden of the party who have those facts to
(21) produce them to overcome that presumption.
(22) However, that has nothing to do with the objection
(23) that this Board has been presented with, which is
(24) that the simple fact is that Mr. Cummins was not
(25) present at the Board of Revision. Two

(1) We've got the opposite side of the coin
(2) in this particular case. And what we're asking
(3) for is that this best evidence of value be the
(4) basis of the determination. Obviously, the Board
(5) of Revision was reluctant to do that.

(6) I would also indicate in a recent — This
(7) Board decided a case where the assertion was that
(8) a — And that was an increase complaint by the
(9) Board of Education — where a very favorable
(10) long-term lease on a big box retail store somehow
(11) should not best the best evidence. And this Board
(12) said that that has no force and effect, citing the
(13) Berea case, saying that, essentially, a sale is a
(14) sale is a sale. The only two things that I can
(15) still see is militating against the use of a sale
(16) as evidence as a sale/lease-back transaction,
(17) which was established by this Board and the
(18) Supreme Court case to create — or, some elements
(19) of economic duress.

(20) Absent on any of those factors, it seems
(21) to me that the arm's-length sale is the best
(22) evidence of value.

(23) MR. GILLIS: I'm not sure that the
(24) issue's been addressed.

(25) First in my response, 5719.19(G), simply

(1) continuances were granted. And there has been no
(2) showing for good cause as to why he didn't appear
(3) below.

(4) THE EXAMINER: Mr. Stehle, do you have
(5) anything to add to this discussion?

(6) MR. STEHLE: With regard to the Board of
(7) Education's objection, I'd just like to note that
(8) the Board of Revision's notes do indicate that the
(9) property owner was not present at the Board of
(10) Revision hearing. The only people present,
(11) according to our notes, were Mr. Petkovic and
(12) Mr. Gorry for the Board of Education.

(13) THE EXAMINER: Mr. Petkovic, do you have
(14) any final comments?

(15) MR. PETKOVIC: No, your Honor.

(16) THE EXAMINER: Okay. As I understand it,
(17) Mr. Gillis, your objection is not to the prop- —

(18) MR. PETKOVIC: Excuse me. I might, just
(19) briefly, as I perceive counsel's argument, we're
(20) creating two separate burdens of proof —

(21) MR. GILLIS: My argument — That
(22) argument —

(23) THE EXAMINER: One at a time, please.

(24) MR. GILLIS: That argument has nothing to
(25) with the objection here. I was simply responding

(1) to what appears to be his closing statement in the
(2) middle of his case in chief.

(3) The objection is with regard to the
(4) testimony that is being presented right now.

(5) **THE EXAMINER:** And the parameters of that
(6) testimony?

(7) **MR. GILLIS:** That's correct.

(8) **THE EXAMINER:** And as I understand what
(9) you initially objected to was not Mr. Cummins
(10) talking to — about the sale of the particular
(11) parcel at issue here, but the adjoining property,
(12) correct?

(13) **MR. GILLIS:** Or anything, for that
(14) matter.

(15) **THE EXAMINER:** Okay. Because —

(16) **MR. GILLIS:** I was willing to allow that
(17) to go forward, if it was limited solely to the
(18) sale of the subject property 'cause we're only
(19) interested in getting the facts with regard to the
(20) sale of the subject property.

(21) That appears to have already been done.

(22) **THE EXAMINER:** Anything further,
(23) Mr. Petkovic?

(24) **MR. PETKOVIC:** Well, as I understand it,
(25) 5715.19(G), it talks in terms of evidence that was

(1) known, evidence, that was known at the time, not
(2) having been submitted to the Board.

(3) And the reason is that this Board,
(4) December 2nd, 2005, in a case involving a sale of
(5) property — I mean, that's Case No. 2004-A-1171
(6) indicated very clearly that when the taxpayer put
(7) into evidence of a transfer and documents with
(8) regard to the transfer, the Board specifically
(9) found on Page 5 of that decision that the
(10) submission of a Settlement Agreement — or,
(11) Settlement Statement, Conveyance Fee and Purchase
(12) Agreement was, to use the Board's word... well,
(13) they found it evidentiary. And we're not putting
(14) in any new documents here. We're simply having
(15) Mr. Cummins explain what he did, and it turns
(16) out — into the documents that you have.
(17) I don't see how that's in any way objectionable.

(18) **MR. GILLIS:** If Mr. Petkovic is
(19) presenting Mr. Cummins without the intention of
(20) the testimony being evidence in this hearing,
(21) then, I suggest we can all go home because we have
(22) nothing else to present — or, he has nothing else
(23) to present at this time.

(24) If he wants to treat Mr. Cummins'
(25) testimony as we would attorney comments that we're

(1) all making right now, as no one evidentiary, then,
(2) I'll ask the Board to make that rule.

(3) **MR. PETKOVIC:** Well, in that particular
(4) instance, your Honor, it's quoting from the same
(5) case I referenced, 2004-A-1171, this Board in that
(6) particular case on December 2nd stated the
(7) following, Page 6 of their opinion: "Thus, since
(8) the property owner submitted competent evidence to
(9) the recent sale, the burden shifted to the
(10) opposing parties to submit evidence that the sale
(11) was not arm's-length."

(12) The record is devoid of any such
(13) evidence. And if that be the case, then, evidence
(14) that it was not arm's-length can it be submitted
(15) under the same thought philosophy Mr. Gillis has
(16) presently in this hearing?

(17) **MR. GILLIS:** If that's the case,
(18) Mr. Petkovic can make his objection. We can put
(19) our case on. We can argue that objection at that
(20) particular time.

(21) But whether or not the presumption, or
(22) the burden, of the two to come forward with
(23) evidence has shifted at this point or not is
(24) irrelevant to the objection at hand.

(25) **THE EXAMINER:** Okay. The Board is going

(1) to overrule your objection; however, you may renew
(2) that objection in your brief, should you wish,
(3) and, also, as to the relevance of it, okay?

(4) Continue, Mr. Petkovic.

(5) **MR. PETKOVIC:** You know what, your Honor?
(6) I think at this juncture, I have no further
(7) questions of Mr. Cummins on direct.

(8) **THE EXAMINER:** Okay. Thank you.

(9) Mr. Gillis, are you ready to
(10) cross-examine this witness?

(11) **MR. GILLIS:** I am.

(12) May see the copy of Statutory Transcript?

(13) **MR. PETKOVIC:** I have it.

(14) **MR. GILLIS:** Thank you.

**CROSS-EXAMINATION
BY MR. GILLIS**

(15)
(16)
(17)
(18) **Q:** Mr. Cummins, I think that you've seen
(19) this and maybe you have a copy in front of you.

(20) **A:** No, I don't have anything.

(21) **Q:** This is the — You previously identified
(22) this as the copy of the Purchase Agreement?

(23) **A:** Correct.

(24) **Q:** Now, attached to that document and
(25) referred therein, I believe, as Exhibit A was the

(1) legal description. And in there is the —
 (2) Actually, it's Exhibit B — and that says — Can
 (3) you identify that, what's it titled?
 (4) A: Limited Warranty Deed.
 (5) Q: Okay. And, actually, I'd like you to
 (6) turn to the signature page. And, in fact, that's
 (7) unexecuted copy; is that correct?
 (8) A: Yes.
 (9) Q: Okay. On the page following, there's
 (10) Exhibit B. That's entitled "Permitted
 (11) Exceptions"; is that correct?
 (12) A: Correct.
 (13) Q: And in there it says, "Attach exceptions
 (14) from the title commitment"; is that correct?
 (15) A: Correct.
 (16) Q: And do you see — as Exhibit B to that —
 (17) to the deed in this document?
 (18) A: Not on this page.
 (19) Q: Can you go ahead and look through there
 (20) and see if you see any permitted exceptions in
 (21) that document?
 (22) A: Are you talking about the bank thing?
 (23) Q: I'm talking about the "permitted
 (24) Exceptions" that are referred to on that page.
 (25) A: On this page?

(1) A: I guess not.
 (2) Q: Okay. There are, in fact, several
 (3) permitted exceptions to this property, are there
 (4) not, when you took title?
 (5) A: It can never be used as a bank again.
 (6) Q: Okay. Is that all —
 (7) A: I believe so.
 (8) Q: — that you understand?
 (9) A: I don't know of any others.
 (10) Q: Okay.
 (11) A: I didn't think that limited use of it —
 (12) Q: Did you attend the closing?
 (13) A: There was no closing.
 (14) Q: I'm sorry. You've indicated you attended
 (15) a closing during direct.
 (16) A: I... The closing would've been done — I
 (17) can't think of the right words for it.
 (18) I believe one party was in Kentucky, and
 (19) I was in Ohio. I don't know why they were in
 (20) Kentucky, but I think we just sat down and signed
 (21) our documents and they signed theirs at a
 (22) different time.
 (23) Q: Okay. I have a Certified copy of the
 (24) recorded deed that I would like to have marked.
 (25) THE EXAMINER: Have you provided that to

(1) Q: Uh-huh.
 (2) A: I don't know what your question is.
 (3) Q: My question is: Is there any stated
 (4) permitted exceptions in the deed that was
 (5) presented on your behalf to the Board of Revision?
 (6) Did you see any in there?
 (7) A: I hate to tell you, I don't understand
 (8) the question.
 (9) Are you asking me if the bank
 (10) permitted — is that where you're going with this?
 (11) Q: No. No. No. My question is: This is a
 (12) copy of a deed —
 (13) A: Okay.
 (14) Q: — that was presented on your behalf by
 (15) your counsel —
 (16) A: Okay.
 (17) Q: — at the Board of Revision.
 (18) A: Okay.
 (19) Q: Okay. Now, that deed's unexecuted. It's
 (20) not signed. It's not recorded, okay? It refers
 (21) to some permitted exceptions —
 (22) A: Okay.
 (23) Q: — with a note that says, "Attach them
 (24) here." And I'm asking you: Do you see them
 (25) attached here?

(1) counsel?
 (2) MR. GILLIS: I just gave him a copy now.
 (3) THE EXAMINER: Okay. Fine.
 (4) Let's have that marked as Appellee's
 (5) Exhibit 1.
 (6)
 (7) Thereupon, Appellee's Exhibit No. 1 was
 (8) marked for purposes of identification.
 (9)
 (10) BY MR. GILLIS:
 (11) Q: I'm going to show you what's been marked
 (12) as Appellees Exhibit No. 1 and ask you if you
 (13) recognize that document.
 (14) A: It's the Limited Warranty Deed for the
 (15) property.
 (16) Q: Okay. And that one is actually signed,
 (17) is that not correct, on the first page?
 (18) A: Oh, I don't know — Yeah. As a matter of
 (19) fact, it's not signed by me, but it's signed by
 (20) somebody from U.S. Bank, it looks like.
 (21) Q: I'd like you to take a look at Exhibit B
 (22) to that recorded deed.
 (23) A: Okay.
 (24) Q: And that is entitled "Exceptions",
 (25) correct?

(1) A: That is correct.

(2) Q: So other than the one restriction of use

(3) that you indicated, that it could never be used as

(4) a bank building again, you indicated that you were

(5) unaware that — the renting of the exceptions,

(6) correct?

(7) A: Yeah. And, actually, it can be used as a

(8) bank building after 15 years, or something.

(9) Q: Okay. But we've got a list here of 33

(10) other exceptions, it appears?

(11) A: Uh-huh.

(12) Q: And can you tell me a little bit more

(13) about Exceptions 12, 13 and 14?

(14) A: 12, 13 and 14, judgment liens in the

(15) original amount of one for \$1,600, one for \$2,200,

(16) one for \$2,200. It seems —

(17) Q: So you took this property with an

(18) exception which included three judgment liens

(19) against the property; is that correct?

(20) A: Yes.

(21) Q: Okay. And you were aware of that when

(22) you bought the property?

(23) A: I believe my attorney — This is not on

(24) the main parcel. This is on the undivided

(25) one-half interest.

(1) Q: Can you tell me where that is indicated?

(2) A: No, I can't. I —

(3) Q: Oh, okay.

(4) Can you tell me about Exceptions No. 30

(5) and 31?

(6) A: "Stated restrictions set forth in the

(7) official record in the Franklin County, Ohio

(8) records", on both 30 and 31.

(9) Q: And do you have any idea what those

(10) restrictions are?

(11) A: No. But, you know, I've been using the

(12) same attorney for years. I'm sure he reviewed

(13) this.

(14) Q: Okay. And then the last one, 33, on the

(15) last page of this exhibit, this one actually

(16) refers to Wendy's International, which, I think,

(17) is this other parcel that you're talking —

(18) A: Uh-huh.

(19) Q: — about. And that includes two other

(20) claims: Workers' Compensation and a Personal

(21) Injury Claim. That one actually references the

(22) fact that that's with the one parcel; none of the

(23) other exceptions make that litigation, do they?

(24) A: Okay.

(25) Q: Is that right?

(1) A: I'd have to agree with you 'cause I don't

(2) know.

(3) Q: Okay. Can you look at the first page of

(4) the deed?

(5) A: Uh-huh.

(6) Q: And there is an indented paragraph. And

(7) this is, I believe, the portion that you were

(8) talking about before. Can you read the indented

(9) paragraph that starts with, "This conveyance is

(10) further...?"

(11) A: "This conveyance is further subject to

(12) the following restriction imposed on the property:

(13) No portion of this property shall be used or

(14) occupied for the principal or incidental purpose

(15) of banking, financial brokerage or other operation

(16) of any automated or remote teller machine or

(17) credit union. The foregoing restrictions

(18) constitutes covenant running with the land for a

(19) period of 15 years from the date of this deed,

(20) after which they shall lapse and shall no

(21) longer" — or, "shall now further" — Let me read

(22) that again — "after which they shall lapse and

(23) shall be of no further force and effect."

(24) Q: Okay. So your understanding of this is

(25) that this building cannot be used for a bank for a

(1) period of 15 years; in fact, you can't have even

(2) an ATM machine on the property; is that right?

(3) A: That is correct. But at the same time,

(4) they were building up Polaris and Bank One, which

(5) is now Chase, had the same affected — a large

(6) chunk of land around there. So I did not see that

(7) holding me back and that didn't hold anyone back

(8) from the Polaris area, so....

(9) Q: It, certainly, didn't hold you back

(10) because you have no intentions of using the

(11) property as a bank; is that correct?

(12) A: That's correct.

(13) Q: But could it have possibly held back

(14) somebody else who was willing to pay more, that

(15) wanted to use it as a bank?

(16) A: In my opinion, no. I don't believe I

(17) would've bought it if I thought that —

(18) Q: You don't think you would've bought it?

(19) Explain. I'm not sure I understand your answer.

(20) A: No, I — If I thought that it was

(21) going — it not being able to be a bank would hold

(22) back or devalue the property, I would not've

(23) purchased it.

(24) Q: For your use?

(25) A: It's not on a main road. No bank's ever

(1) going to go in there again.
 (2) Q: The bank was there in the first place.
 (3) A: That's why they closed.
 (4) Q: Now, you're telling me that — the
 (5) business practices of Star Bank or are you telling
 (6) me what you think they —
 (7) A: That's what I think.
 (8) Q: Okay. That's what you think, okay.
 (9) You have no evidence of that —
 (10) THE EXAMINER: One at a time, please.
 (11) BY MR. GILLIS:
 (12) Q: Okay. So for your purposes, this
 (13) restriction had no effect on the value?
 (14) A: That is correct.
 (15) Q: Okay. But you have no idea whether for
 (16) somebody else's purposes, it might have had an
 (17) effect on the value?
 (18) A: I believe that's one reason we get an
 (19) appraisal on a building before you purchase it.
 (20) This building was financed. It had — appraised
 (21) out. The appraiser did see a devalue enough I
 (22) couldn't finance it.
 (23) Q: At your purchase price, did the appraisal
 (24) take into account the fact that there were
 (25) voluntary deed restrictions being placed on the

(1) Q: Do you know when those permits were
 (2) taken?
 (3) A: Fall of that year; if we just agree it's
 (4) 2002, it would've been in the fall sometime. I
 (5) don't know.
 (6) Q: Do you know the value of those permits?
 (7) A: No, I do not.
 (8) Q: If I told you the value was \$120,000,
 (9) would that surprise you?
 (10) A: No, it wouldn't.
 (11) Q: Okay. When were the improvements made?
 (12) When were they done?
 (13) A: Immediately after the building permit was
 (14) issued.
 (15) Q: So the tax lien date was January of '03.
 (16) The value as of that time, then, in your
 (17) estimation, was still the three-eighty-five, is
 (18) what you're claiming?
 (19) A: Yes.
 (20) Q: Even though they were \$120,000 more of
 (21) improvements done?
 (22) A: I believe so. We didn't get into what
 (23) those improvements were.
 (24) Q: Okay. Are you a Licensed Real Estate
 (25) Broker?

(1) property?
 (2) A: I am 99-percent sure.
 (3) Q: So it's your testimony that the appraisal
 (4) was done on this property, took into account the
 (5) fact that there were voluntary deed restrictions
 (6) between your seller and yourself to limit the use
 (7) of this property?
 (8) A: I am 99-percent sure of that.
 (9) MR. GILLIS: I have no further questions.
 (10) THE EXAMINER: Mr. Stehle, do you have
 (11) any cross-examination of this witness?
 (12) MR. STEHLE: Yes, I do, your Honor.
 (13) CROSS-EXAMINATION
 (14) BY MR. STEHLE:
 (15) Q: I think you indicated in direct that the
 (16) purchase was in '03. Our records indicate the
 (17) purchase was in August of '02; is that correct?
 (18) A: You probably are correct. I did try to
 (19) clarify. It's been a while. I don't know the
 (20) exact time.
 (21) Q: Okay. Now, subsequent to the purchase,
 (22) you took out some building permits; is that
 (23) correct?
 (24) A: That is correct.

(1) A: No, I'm not.
 (2) Q: Okay. Are you a Licensed Appraiser?
 (3) A: No, I'm not.
 (4) Q: Okay. Do you have any evidence with you
 (5) of the value of the property as of January of '03?
 (6) A: Do I have any evidence of it?
 (7) Q: Uh-huh.
 (8) A: No.
 (9) MR. STEHLE: I think that's all.
 (10) THE EXAMINER: Mr. Petkovic, redirect?
 (11) REDIRECT EXAMINATION
 (12) BY MR. PETKOVIC:
 (13) Q: Thank you.
 (14) With regard to the County Prosecutor's
 (15) question on improvements to the property, were
 (16) those trade fixtures for her medical practice?
 (17) A: Most of — A large percentage of them
 (18) were, yes.
 (19) Q: The only thing you did is take out a
 (20) vault?
 (21) A: In fact, I believe that's one reason the
 (22) building sat on the market for three years. The
 (23) vault was just a — it was just in a place that
 (24) wasted a lot of space. And the vault was a

(1) difficult item to remove.

(2) Q: So you had to take out building permits
(3) and put her trade fixtures in?

(4) A: That's correct. The interior building,
(5) when you the come in and everything, is exactly
(6) the way it was before.

(7) Q: Now, Mr. Stehle asked you if you were an
(8) appraiser or a broker; do you recall those
(9) questions?

(10) A: I do remember those questions.

(11) Q: And you answered in the negative?

(12) A: That's correct.

(13) Q: What you were was the gentleman that
(14) spent \$385,000 in real money to buy this property;
(15) am I correct?

(16) A: Yes.

(17) Q: Okay. Now, Mr. Gillis asked you about
(18) certain items. And I think it referred to Nos.
(19) 12, 13 and 14. I'll read them to you.

(20) Number 12 says, "Judgment lien in the
(21) original amount stated to be \$1,681.86 for the
(22) Debtor, it is George Smith Enterprises, d/b/a
(23) Wendy's Cincinnati 45206; and the Creditor's the
(24) Ohio Department of Taxation."

(25) Did that have anything, in your mind, to

(1) do with the chain of title from the bank, a lien
(2) against Wendy's?

(3) A: Restate the end of that question.

(4) Q: Was it your understanding that it had
(5) anything to do with the chain of title from the
(6) bank to you, a lien against Wendy's, which is next
(7) door?

(8) A: It could've been atied (sic) to the
(9) undivided one-half interest of their parcel, but
(10) there's no way it could've been atied (sic) to the
(11) main building.

(12) Q: Okay. And how about No. 14? It says,
(13) "Judgement lien numbers and the original amounts
(14) say to be \$2,265. The Debtor is Windlit, Inc.,
(15) d/b/a Wendy's; Guarantee, Indiana; and the
(16) Creditor is Ohio State Department of Taxation.

(17) Did that have anything to do with the
(18) bank?

(19) A: No.

(20) Q: It had something to did with this
(21) undivided half interest, which is still titled in
(22) the name of R. L. Richards Trustee, whose
(23) succession and title comes from Wendy's?

(24) A: That's correct, yes.

(25) Q: And the rest, I see here, "Restrictions

(1) or Easements for Sewers and Water Lines," is
(2) that — In your investment experience, is that
(3) normal on a piece of property?

(4) A: I have quite a few other investment
(5) properties and it's pretty much, you know, what
(6) you see on all of them.

(7) Q: Okay. And then No. 33, it says, "Pending
(8) Workers' Compensation suites" — I guess it's
(9) "suits", mistype — "against Wendy's."

(10) Does that have anything to do with the
(11) bank or your chain of title?

(12) A: Not that I know of. My attorney was fine
(13) with it.

(14) Q: "Pending personal injury cases against
(15) Wendy's set forth in 2CV-575 and 02CV-2889, does
(16) that have anything to do with your chain of title?"

(17) A: No.

(18) Q: Okay. So the only thing that you knew of
(19) when you did your due diligence was, originally,
(20) there was a restriction, as I understand it, for
(21) five years?

(22) MR. GILLIS: Objection. There's been no
(23) testimony —

(24) MR. PETKOVIC: It's an exhibit that I
(25) sent you, Mr. Gillis, by Certified mail on October

(1) the....

(2) MR. GILLIS: Let me take a look at it,
(3) then.

(4) MR. PETKOVIC: Okay.

(5) Sent by Certified mail on October the
(6) 9th —

(7) MR. GILLIS: Uh-huh.

(8) And tell me what we're talking about —

(9) MR. PETKOVIC: That was original five
(10) years and the deed shows that.

(11) MR. GILLIS: Right. This is unexecuted
(12) copy. It looks like an option to chose two
(13) things. And they chose fifteen over five.

(14) THE EXAMINER: And my question is: Is
(15) that reference to the five years been marked as an
(16) exhibit or is it in the Statutory Transcript?

(17) MR. PETKOVIC: I believe that one's in
(18) the transcript.

(19) THE EXAMINER: Do you have the
(20) transcript?

(21) MR. PETKOVIC: Yes, I do.

(22) That's in Exhibit B in the Statutory
(23) Transcript.

(24) THE EXAMINER: Okay.

(25) BY MR. PETKOVIC:

[1] Q: Mr. Cummins, this property was on the
[2] open market for sale to whomever?

[3] A: Yes, it was.

[4] MR. GILLIS: Objection. You can't
[5] testify with regard to who U.S. Bank or Star Bank
[6] was willing to sell this property to.

[7] THE EXAMINER: Response, Mr. Petkovic?

[8] MR. PETKOVIC: I don't think any's
[9] required, your Honor.

[10] THE EXAMINER: Mr. Stehle, do you have
[11] any discussion?

[12] MR. STEHLE: No, your Honor.

[13] THE EXAMINER: I think this testimony has
[14] to be limited to his own personal understanding of
[15] the market for this property. Obviously, what is
[16] in the mind of the bank is not within his personal
[17] recollection.

[18] So as long as it responds to what his
[19] understanding of what the market was, I'll allow
[20] it.

[21] MR. PETKOVIC: Well, I'll withdraw the
[22] question and rephrase it to make it clear.

[23] BY MR. PETKOVIC:

[24] Q: You saw this property was listed by a
[25] broker; did you not?

[1] A: Yes, I did.

[2] Q: And whatever interest that it originally
[3] generated, then, you explored the possibility of
[4] acquiring this property, correct?

[5] A: Yes.

[6] Q: And your perception was that it was
[7] marketed by a commercial broker and available to
[8] anybody that would read the sign and call the
[9] number; am I correct?

[10] A: Absolutely correct.

[11] Q: And you read the sign, you called the
[12] number. And then you made your own inquiry and,
[13] ultimately, purchased this property in August of
[14] 2002?

[15] A: Yes, I did.

[16] Q: Okay. And subsequent to do that purchase
[17] of the property for \$385,000 you took out a vault
[18] and you put in Dr. Cummins' trade fixtures; did
[19] you not?

[20] A: Yes, I did.

[21] Q: Okay. In order to put in her trade
[22] fixtures, was it necessary for you to secure a
[23] building permit?

[24] A: Yes, it was.

[25] Q: Okay. Now, what type of medical practice

[1] does Dr. Cummins have?

[2] MR. GILLIS: I'm going to object. This
[3] is way outside the scope of cross-examination.

[4] MR. PETKOVIC: Well, your Honor,
[5] Prosecutor made allusion to the fact that there
[6] was some kind of improvements to the property.

[7] Well, what I'm trying to establish is
[8] that the property wasn't — improved trade
[9] fixtures were put in there.

[10] MR. GILLIS: That's already been
[11] addressed.

[12] MR. PETKOVIC: Well, with your consent,
[13] then, I'll withdraw the question.

[14] THE EXAMINER: Okay.

[15] MR. PETKOVIC: Your Honor, I have no
[16] further questions of Mr. Cummins.

[17] THE EXAMINER: Thank you.

[18] Mr. Gillis, do you have any
[19] recross-examination?

[20] MR. GILLIS: I don't.

[21] THE EXAMINER: And, Mr. Stehle, do you
[22] have any recross-examination?

[23] MR. STEHLE: Just briefly.

[24]

[25]

RECROSS-EXAMINATION

BY MR. STEHLE:

[1] Q: Mr. Cummins, do you pay personal property
[2] taxes on these so-called trade fixtures?

[3] A: I don't know.

[4] MR. STEHLE: Nothing further.

[5] THE EXAMINER: The Board does have one
[6] inquiry, which the Board will allow counsel to
[7] follow up.

[8]

[9]

EXAMINATION

BY THE EXAMINER:

[10] Q: With regard to this 120,000 in building
[11] permits that we've taken out, you said part of it
[12] was to remove the vault and part it was for the
[13] trade fixtures for Dr. Cummins' practice. Do you
[14] know approximately how much was involved in
[15] removing the vault?
[16] know approximately how much was involved in
[17] removing the vault?

[18] A: Well, it was a significant project, but I
[19] don't know — I mean, my first estimates were,
[20] like, 45- and \$50,000 to remove the vault 'cause
[21] they had to take a wall out of the side of the
[22] building.

[23] These vaults are made of like concrete
[24] with metal-flex and reinforced wire or steel in
[25] them. And the walls are about this thick

(1) (indicating). And the only way to get the thing
(2) out was to tear the wall out of the side of the
(3) building and take the vault out. So you hire one
(4) guy to take the vault out, and then you had to
(5) hire another guy to do most of the wall and
(6) rebuild the wall and put everything back together.

(7) Q: Uh-huh.

(8) A: So my best guess was that all the things
(9) involved doing that were probably 50 grand to
(10) change —

(11) Q: Okay.

(12) A: — to really get the vault out of there.
(13) And I think that's one of the reasons the
(14) thing sat on the market so long: Nobody wanted to
(15) spend the money to do that.

(16) THE EXAMINER: Thank you.

(17) Any follow up to the Board's inquiry,
(18) Mr. Petkovic?

(19) MR. PETKOVIC: None whatsoever, your
(20) Honor.

(21) THE EXAMINER: Mr. Gillis?

(23) **REXCROSS-EXAMINATION**
(24) **BY MR. GILLIS:**

(25) Q: Was the vault taken out prior to January

(1) 1st, 2003?

(2) A: It would've been right before or right
(3) after. I cannot testify under oath either way.
(4) But it's real close, real close; either right
(5) before or right after.

(6) Q: And how many additional square feet did
(7) you obtain by removing that vault?

(8) A: Well, the building started out at 3,000,
(9) and it's still 3,000. But the way the vault
(10) was — It's an unusual-shaped building. And the
(11) way the vault is — it was just a rectangle,
(12) really. It took a lot of that 3,000 square feet
(13) and made it unusable.

(14) Q: Okay. So how many square feet, in your
(15) estimation, that were previously unusable are
(16) usable now because of the removal of the vault?

(17) A: Probably 20 to 25 percent of interior
(18) space, just because it was located at such an odd
(19) and unusual angle it really made it a whole — one
(20) whole quarter of the building pretty much unusable.
(21) for other than closets or something like that.

(22) Q: So, essentially, by removing the vault, I
(23) understand the building's total square footage was
(24) 3,000 and still is. You gained 20 to 25 percent
(25) more usable space within that 3,000 by removing

(1) the vault?

(2) A: At least for our purposes, I believe so.
(3) That's my best guesstimate.

(4) MR. GILLIS: No further questions.

(5) THE EXAMINER: Mr. Stehle?

(6) MR. STEHLE: Nothing further, your Honor.

(7) THE EXAMINER: Mr. Cummins, thank you
(8) very much for your testimony. You may step down.

(9) THE WITNESS: Thank you. I have
(10) somebody's paper.

(11) MR. GILLIS: That's the Board's.

(12) THE EXAMINER: The Board will take that.
(13) Thank you.

(14) Mr. Petkovic, do you have any other
(15) witnesses?

(16) MR. PETKOVIC: No. We would rest, your
(17) Honor, and respectfully request that the document
(18) marked and identified as Exhibit A be admitted
(19) into evidence.

(20) THE EXAMINER: Objection to Appellant's
(21) Exhibit A, Mr. Gillis?

(22) MR. GILLIS: None.

(23) THE EXAMINER: Mr. Stehle?

(24) MR. STEHLE: No objection.

(25) THE EXAMINER: Without objection,

(1) Appellant's Exhibit A is admitted into evidence.

(2)
(3) Thereupon, Appellant's Exhibit A was
(4) received into evidence.

(5)
(6) THE EXAMINER: Then, Mr. Petkovic, at
(7) this point, you rest?

(8) MR. PETKOVIC: Yes, your Honor.

(9) THE EXAMINER: Mr. Gillis, do you have
(10) anything on behalf of the Board of Education
(11) today?

(12) MR. GILLIS: The Board of Education has
(13) nothing further at this time.

(14) However, we move that Appellee's
(15) Exhibit 1 be introduced into the —

(16) MR. PETKOVIC: That would be the deed,
(17) your Honor?

(18) THE EXAMINER: Uh-huh.

(19) MR. PETKOVIC: Without objection.

(20) THE EXAMINER: Mr. Stehle?

(21) MR. STEHLE: Nothing further, your Honor.

(22) THE EXAMINER: There being no objection
(23) to Appellant's Exhibit 1, it is admitted into
(24) evidence.

(25)

[1] Thereupon, Appellant's Exhibit No. 1 was
 [2] received into evidence.
 [3]
 [4] THE EXAMINER: Anything further on behalf
 [5] of the Board of Education?
 [6] MR. GILLIS: Nothing further.
 [7] THE EXAMINER: Mr. Stehle, on behalf of
 [8] the BOR, the Board of Revision, do you have
 [9] anything to present here today?
 [10] MR. STEHLE: No, your Honor. I'd just
 [11] like to note that the relevant date here is
 [12] January 1st of '03. The sale date was August of
 [13] '02. There was no evidence presented at the Board
 [14] of Revision as to the value on January 1st, 2003,
 [15] especially considering the vast improvements that
 [16] were made between the sale date and the tax lien
 [17] date.
 [18] THE EXAMINER: Okay. Let's go off the
 [19] record for a second.
 [20] (Discussion held off the record.)
 [21] THE EXAMINER: We're back on the record.
 [22] And after a brief discussion, the parties have
 [23] indicated a desire to submit briefs in this
 [24] matter; therefore, the following briefing dates
 [25] are assigned.

[1] Mr. Petkovic, as Appellant, your brief
 [2] will be due in approximately six weeks from today
 [3] on April 25th, 2006.
 [4] Mr. Gillis and Mr. Stehle, the Appellee's
 [5] briefs will be due four weeks later on May 24th,
 [6] 2006.
 [7] And any reply brief, Mr. Petkovic, would
 [8] be due approximately two weeks after the
 [9] Appellee's responses on June 7th, 2006.
 [10] Are these briefing dates acceptable to
 [11] counsel, Mr. Petkovic?
 [12] MR. PETKOVIC: Yes, your Honor.
 [13] THE EXAMINER: Mr. Gillis?
 [14] MR. GILLIS: Yes.
 [15] THE EXAMINER: Mr. Stehle?
 [16] MR. STEHLE: Yes, your Honor.
 [17] THE EXAMINER: Thank you.
 [18] Is there anything further that you would
 [19] like to present to this Board for its
 [20] consideration here today, Mr. Petkovic?
 [21] MR. PETKOVIC: No, your Honor. But I'd
 [22] like to return your Statutory Transcript.
 [23] THE EXAMINER: And the Board would like
 [24] for you to return that Statutory Transcript.
 [25] Mr. Gillis, do you have anything further

[1] on behalf of the Board of Education?
 [2] MR. GILLIS: Nothing further, your Honor.
 [3] THE EXAMINER: And, Mr. Stehle, on behalf
 [4] of the Board of Revision, do you have anything
 [5] further?
 [6] MR. STEHLE: Nothing further, your Honor.
 [7] THE EXAMINER: There being nothing
 [8] further, the Board would like to thank you for
 [9] your attendance and your consideration.
 [10] You will be notified of the Board's
 [11] decision.
 [12] And this hearing is now concluded. Thank
 [13] you.
 [14]
 [15] (Thereupon, the hearing was concluded at
 [16] 10:00 o'clock a.m. on Wednesday, March
 [17] 15, 2006.)
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