

IN THE SUPREME COURT

STATE OF OHIO

APPEAL FROM THE BOARD OF TAX APPEALS

POLARIS AMPHITHEATER CONCERTS, INC.,	)	SUPREME COURT CASE
	)	NUMBER 07-0347
)	
Appellant,)	
	)	BOARD OF TAX APPEALS
vs.	)	CASE NUMBER 2004-V-1294
)	
DELAWARE COUNTY BOARD OF)	
REVISION, DELAWARE COUNTY)	
AUDITOR, BOARD OF EDUCATION OF THE)	
OLENTANGY LOCAL SCHOOLS, AND TAX)	
COMMISSIONER OF THE STATE OF OHIO,)	
)	
Appellees.)	
)	

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STATEMENT OF THE CASE

This case comes to the Court from a decision and order of the Ohio Board of Tax Appeals under Revised Code Section 5717.04. A complaint for the tax year 2003 was filed by the Appellant, Polaris Amphitheater Concerts, Inc. in connection with the outdoor amphitheater property that is the subject of this appeal. A counter-complaint was filed by the Appellee Board of Education of the Olentangy Local Schools wherein they requested that the County Auditor's fair market value of \$20,734,700 be maintained. The Taxpayer's complaint requested a value of \$14,000,000 for the property. Supplement to the Briefs (hereinafter Supp.) at page 1.

The Delaware County Board of Revision conducted a hearing on the complaints and issued a decision on wherein the County Auditor's assessment of the property was retained. Supp. at page 7. The Appellant appealed the decision of the Delaware County Board of Revision to the Ohio Board of Tax Appeals under Revised Code Section 5717.01.

When this matter was scheduled for hearing before the Ohio Board of Tax Appeals the Appellant submitted an appraisal valuing the land at a fair market value of \$7,200,000 as of January 1, 2003.¹ Supp at pages 12-156. The Appellee Board of Education of the Olentangy Local Schools submitted an appraisal at the Board of Tax Appeals which valued the land at a fair market value of \$8,600,000.² Supp. at pages 213-228. The Appellee County Auditor had assessed the land at a fair market value of \$13,799,110, no evidence of the basis for this value appears in the record in this appeal and the County Auditor and Board of Revision did not appear

¹ The appraisal did not include a value for parcel 318-442-02-0024-000, a residentially zoned parcel of vacant land valued by the County Auditor at a fair market value \$125,700. Supp. at page 351-356. The Appellant did not contest the value of this parcel at the Board of Tax Appeal hearing. See Board of Tax Appeals decision and order at page 2 (Footnote 1).

² The appraisal included the eight acre residential parcel 318-442-024-000. See Board of Tax Appeals

or participate at the Board of Tax Appeals. Supp. at pages 359 (TR. Volume I at page 2) and 449 (TR. Volume II at page 2).

In its decision and order the Ohio Board of Tax Appeals did not value the land based on the appraisals submitted by the parties. Board of Tax Appeals decision and order at pages 14 and 18. The Board of Tax Appeals did state that “that the evidence of value provided by the [Board of Education] is supportive of the original values assigned to the subject property by the [A]uditor and affirmed by the Delaware County Board of Revision.” Board of Tax Appeals decision and order at page 18. The Delaware County Auditor’s value for the land was \$13,799,110 and the Board of Education’s appraiser testified to a value of \$8,600,000. Board of Tax Appeals decision and order at pages 2 and 16. Since the statement quoted above by the Board of Tax Appeals and its value for the land are not supported by the Record in this appeal, the Appellant filed an appeal from the Board’s decision and order to this Court under Revised Code Section 5717.04

STATEMENT OF THE FACTS

At the hearing conducted by the Board of Tax Appeals the Appellant submitted an appraisal (Supp. at pages 12-156) and the testimony of Robin M. Lorms, MAI, CRE on the issue of the value of the land. Supp at pages 386-407 (TR. Volume I at pages 109-194). Bryan Ross and Thomas M. Warner, P.E. of Advanced Civil Design provided an analysis of the existing site infrastructure and certain costs as part of Robin Lorms’ analysis of the highest and best use of the land and its valuation under the development approach. Supp at pages 363-385 (TR Volume I at

decision and order at page 3 (Footnote 2).

pages 19-107).³ Mr. Lorms valued the land utilizing two approaches to value recognized by the real estate appraisal community and Chapter 5705-03-07 of the Ohio Administrative Code. (Supp. at pages 52-79.) He prepared a sales comparison approach (market data approach) and a land development analysis (development method) to value in arriving at a fair market value of \$7,200,000 for the land as of January 1, 2003.

The Appellee Olentangy Local Schools Board of Education submitted the appraisal report and testimony of Samuel D. Koon, MAI. Supp. at pages 157-258, 450-469 (TR. Volume II at pages 6-83). Mr. Koon valued the land at \$8,600,000 (including the 8 acres of residential land which he valued as if it were zoned commercial in violation of the Court's decision in Porter v. Bd. of Revision (1977), 50 Ohio St.2d 307) Supp. at pages 228 and 453 (TR. Volume II at pages 18-19). The valuation of this portion of the property at \$95,000 per acre, or \$760,000 (8 acres x \$95,000) explains a portion of the difference between Mr. Lorms value at \$7,200,000 (excluding the 8 residential acres) and Mr. Koon's inclusion of the acreage ($\$8,600,000 - \$760,000 = \$7,840,000$). Supp. at pages 79, 228 and 453 (TR. Volume II at pages 18 and 19). Excluding the 8 acres of residential land the appraisals are less than 10% apart ($\$7,840,000/\$7,200,000 = \$8.88\%$).

³ Appellant's Exhibits 1 and 2 referenced in their testimony appear as exhibits in Mr. Lorm's appraisal. See Supp. at pages 64 and 65 respectively. Due to the large size (blue print size) of Appellant's Exhibits 1, 2, and 3 they have not been separately reproduced and included in the supplement to the briefs.

LAW AND ARGUMENT

PROPOSITION OF LAW NO. 1

**IT IS UNREASONABLE AND UNLAWFUL TO ASSESS LAND IN OHIO
IN EXCESS OF IT'S FAIR MARKET VALUE.**

This proposition of law addresses the following assignment of error:

ASSIGNMENT OF ERROR NO. 1

The Board of Tax Appeals value for the land in its decision and order is unreasonable and unlawful.

Ohio Law supports the approach to value taken by the Appellant in this case in submitting an appraisal in support of their claim with respect to the true value and taxable value of the land which is the subject of this appeal.

Revised Code Section 5715.01 provides that the tax commissioner “shall adopt, prescribe, and promulgate rules for the determination of true value and taxable value of real property by uniform rule....” Revised Code Section 5715.01. Rule 5705-03-07 of the Ohio Administrative Code provides that in valuing land “the county auditor shall consider, along with other factors, not only the present use of the land but also its highest and best probable legal use consistent with existing zoning and building regulations.” Ohio Administrative Code Rule 5705-03-07(A). The Rule goes on in subsection (C) to delineate four principal methods for the valuation of land. “The preferred method is the market data or comparative process.... This method shall be used except in unusual circumstances.” Ohio Administrative Code Rule 5705-03-07(C)(1). Both Mr. Lorms and Mr. Koon used this method in valuing the land in their appraisals. Supp. at pages 52-61 and 213-228. There is no evidence in the record what method the Delaware County Auditor used to value the land. Mr. Lorm’s also considered the development method as allowed by Ohio Administrative

Code Rule 5705-03-07(C)(4) in his appraisal since it was his opinion that the highest and best use of the property was not its current use. Supp. at pages 49-50, 62-78.

As the Court recently recognized in Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision, 113 Ohio St.3d 281, 2007-Ohio-1948, (hereinafter Dayton-Montgomery)

when the evidence presented to the board of revision or the BTA contradicts the auditor's determination in whole or in part, and when no evidence has been adduced to support the auditor's valuation, the BTA may not simply revert to the auditor's determination. Whenever it does so, the BTA is acting unlawfully by making a finding of value that is affirmatively contradicted by the only evidence in the record.

Id. at 288-289.

The evidence in Dayton-Montgomery contradicted the auditor's valuation of the improvements and the case was remanded to the Board of Tax Appeals with instructions to value the building on the basis of the cost evidence in the record. Id. at 282.

There is no evidence in the Record in this appeal to support the Delaware County Auditor's valuation of the land and the Board of Tax Appeals decision and order adopting that valuation is unreasonable and unlawful. The Board of Tax Appeals finding on the issue of the valuation of the land is affirmatively contradicted by the appraisal reports and testimony of both appraisers in this appeal. Supp. at pages 12-156, 386-407 (TR. Volume I at pages 109-194), 157-258, and 450-469 (TR. Volume II at pages 6-83). The decision and order of the Board of Tax Appeals should be reversed and the case remanded with instructions to the Board to value the land based upon the evidence in the Record. See Dublin-Sawmill Properties v. Franklin Cty. Bd. of Revision (1993), 67 Ohio St.3d 575, 577 (reversing and remanding an appeal to the Board of Tax Appeals to redetermine the value of the land based upon the evidence in the record).

PROPOSITION OF LAW NO. II

IT IS UNREASONABLE AND UNLAWFUL TO ASSESS LAND IN OHIO AT VALUES THAT ARE NOT SUPPORTED IN THE RECORD.

This proposition of law addresses the following assignments of error:

ASSIGNMENT OF ERROR NO. 2

There is no evidence in the record to support the Board of Tax Appeals valuation of the land, its decision and order is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 3.

The Board of Tax Appeals finding “that the evidence of value provided by the [Board of Education] is supportive of the original values assigned to the subject property by the [A]uditor and affirmed by the Delaware County Board of Revision” for the land is unreasonable and unlawful.

There is no evidence in the Record in this appeal to support the Board of Tax Appeals valuation of the land. The Board of Tax Appeals decision and order upheld the Delaware County Auditor’s valuation of the land. Board of Tax Appeals decision and order at page 18. There is no explanation in the Record in this appeal as to how the Delaware County Auditor’s valuation of the land was determined. The proceeding before the Delaware County Board of Revision did not in any way explain the basis for the Auditor’s valuation of the land, nor does the Board of Revision decision. See Supp. at page 7. No one from the County Auditor’s office or the County Board of Revision appeared at the hearing before the Board of Tax Appeals in this case, and no appearance was made by their attorney. Supp. at pages 359 (TR. Volume I at page 2) and 449 (TR. Volume II at page 2). The evidence of both parties who appeared at the Board of Tax Appeals showed that the Auditor’s valuation of the land was excessive. No one from the County submitted any evidence in support of their value for the land at the Board of Revision hearing or

the Board of Tax Appeals. Notwithstanding this lack of evidence the Auditor's valuation of the land was upheld. This is ridiculous! Either the County thought their value for the land couldn't be supported or they just didn't care. (The County Appellees received copies of the appraisals submitted at the Board of Tax Appeals hearing in advance of the hearing pursuant to the rules of the Board of Tax Appeals).

In Amsdell v. Cuyahoga Cty. Bd. of Revision (1994) 69 Ohio St. 3d. 572 the Court found that "the evidence before the Board of Tax Appeals established that the true value of the subject property was no more than its acquisition and construction costs of \$1,305,771." Id. at 575. The Record in this appeal shows that the true value of the land is at most \$8,600,000. See Board of Tax Appeals decision and order at page 16 and Supp. at page 228.

The Court should note that the Appellant did not contest the value of the improvements in its complaint before the Delaware County Board of Revision, it challenged their classification as real estate. That issue, although litigated before the Board of Tax Appeals, has not been appealed to this Court. Only the valuation of the land has been raised in the Appellant's notice of appeal.

The Board of Tax Appeals decision and order affirming the County Auditor's valuation of the land when the Board expressly referenced an appraisal in the Record that contradicted its valuation conclusion for the land is unreasonable and unlawful. The Board of Tax Appeals finding "that the evidence of value provided by the [Board of Education] is supportive of the original values assigned to the subject property by the [A]uditor and affirmed by the Delaware County Board of Revision" is an erroneous finding based on the evidence in the appeal discussed above. Mr. Koon's value of \$8,600,000 for the land does not support the County Auditor and

Board of Revision valuations of the land at a \$13,799,110. As a result, the Board of Tax Appeals decision and order on the valuation of the land is unreasonable and unlawful and should be reversed and remanded with instructions to value the land based upon the appraisal evidence in the Record.

CONCLUSION

For the foregoing reasons, the Appellant Polaris Amphitheater Concerts, Inc. respectfully requests that this Court reverse the decision and order of the Ohio Board of Tax Appeals and remand the case to the Ohio Board of Tax Appeals with instructions to find the fair market value or true value in money of the subject land based upon the appraisal evidence in the Record.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing Brief of Appellant Polaris Amphitheater Concerts, Inc. was mailed via regular U.S. mail postage prepaid, the 20th day of July, 2007 to the following: James R. Gorry, Rich, Crites & Dittmer, LLC, 300 East Broad Street, Suite 300, Columbus, Ohio 43215-3452, Attorney for the Appellee Board of Education of the Olentangy Local Schools; David Yost, Delaware County Prosecutor, 140 North Sandusky Street, Delaware, Ohio 43015, Attorney for the Appellees Delaware County Board of Revision and Delaware County Auditor, and Marc Dann, Ohio Attorney General, State Office Tower, 17th Floor, 30 East Broad Street, Columbus, Ohio 43215-3428, Attorney for the Appellee Tax Commissioner of the State of Ohio.



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T1765-03
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IN THE SUPREME COURT

STATE OF OHIO

APPEAL FROM THE BOARD OF TAX APPEALS

POLARIS AMPHITHEATER CONCERTS,)
INC.,)

Appellant,)

v.)

DELAWARE COUNTY BOARD OF)
REVISION, DELAWARE COUNTY)
AUDITOR, BOARD OF EDUCATION OF)
THE OLENTANGY LOCAL SCHOOLS)
AND TAX COMMISSIONER OF THE)
STATE OF OHIO,)

Appellees.)

SUPREME COURT CASE
NUMBER: _____

07 - 0347

BOARD OF TAX APPEALS
CASE NUMBER 2004-V-1294

FILED
FEB 22 2007
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

NOTICE OF APPEAL

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IN THE SUPREME COURT

STATE OF OHIO

APPEAL FROM THE BOARD OF TAX APPEALS

POLARIS AMPHITHEATER CONCERTS, INC.,)	SUPREME COURT CASE
	)	NUMBER: _____
)	
Appellant,)	
)	
v.)	
)	
DELAWARE COUNTY BOARD OF REVISION, DELAWARE COUNTY AUDITOR, BOARD OF EDUCATION OF THE OLENTANGY LOCAL SCHOOLS, AND TAX COMMISSIONER OF THE STATE OF OHIO,	)	BOARD OF TAX APPEALS
	)	CASE NUMBERS 2004-V-1294
)	
	)	<u>NOTICE OF APPEAL TO THE</u>
	)	<u>SUPREME COURT OF OHIO</u>
	)	<u>PURSUANT TO SECTION</u>
Appellees.,	)	<u>5717.04 REVISED CODE</u>
)	

The Appellant, Polaris Amphitheater Concerts, Inc., by and through counsel, hereby gives notice of its appeal to the Supreme Court of The State of Ohio, from a Decision and Order of the Ohio Board of Tax Appeals, rendered on the 26th day of January 2007, a copy of which is attached hereto as "Exhibit A" and which is incorporated herein as though

fully rewritten in this Notice of Appeal. The Errors complained of are attached hereto as "Exhibit B" which are incorporated herein by reference.

Respectfully submitted,

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EXHIBIT "B"

ASSIGNMENT OF ERRORS

ASSIGNMENT OF ERROR NO. 1

The Board of Tax Appeals value for the land in its decision and order is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 2

There is no evidence in the record to support the Board of Tax Appeals valuation of the land, its decision and order is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 3

The Board of Tax Appeals finding "that the evidence of value provided by the [Board of Education] is supportive of the original values assigned to the subject property by the [A]uditor and affirmed by the Delaware County Board of Revision" for the land is unreasonable and unlawful.

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OHIO BOARD OF TAX APPEALS

Polaris Amphitheater Concerts, Inc.,)

CASE NO. 2004-V-1294

Appellant,)

(REAL PROPERTY TAX)

vs.)

DECISION AND ORDER

Delaware County Board of Revision, the)
Delaware County Auditor, and the)
Board of Education of the Olentangy Local)
Schools,)

Appellees.)

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Entered JAN 26 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 Polaris Amphitheater Concerts, Inc. ("Polaris") from a decision of the Delaware County Board of Revision ("BOR"). In said decision, the BOR determined the true and taxable values of the subject property

Exhibit "A"
(1 of 19)

for tax year 2003 originally established by the Delaware County Auditor ("auditor").

should remain as follows:

Parcel 318-442-02-025-001	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 3,666,700	\$1,283,350
BLDG	\$ 5,668,400	\$1,983,940
TOTAL	\$ 9,335,100	\$3,267,290
<hr/>		
Parcel 318-442-02-025-918	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 3,224,200	\$1,128,470
BLDG	\$ 0	\$ 0
TOTAL	\$ 3,224,200	\$1,128,470
<hr/>		
Parcel 318-442-02-025-000	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 1,102,300	\$ 385,810
BLDG	\$ 0	\$ 0
TOTAL	\$ 1,102,300	\$ 385,810
<hr/>		
Parcel 318-442-02-025-919	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 5,688,700	\$1,991,050
BLDG	\$ 1,258,700	\$ 440,550
TOTAL	\$ 6,947,400	\$2,431,600
<hr/>		
Parcel 318-442-02-024-000	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 117,200	\$ 41,020
BLDG	\$ 8,500	\$ 2,980
TOTAL	\$ 125,700	\$ 44,000
<hr/>		
Grand Totals	\$20,734,700	\$7,257,170

Polaris requests that the subject property's improvements be reclassified as personalty and for the remaining land to be valued at \$7,200,000.¹ The Olentangy Local Schools Board of Education ("BOE") requests that the subject property's value remain unchanged as originally determined by the auditor. We now consider this matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the

¹ In its brief, Polaris notes that it does not contest the value of the fifth parcel, 318-442-02-024-000. Brief of appellant, at 5, footnote 2.

auditor, and the evidence presented at this board's evidentiary hearing ("H.R. I" and "H.R. II").

The subject property is an outdoor amphitheater constructed in 1994 and is located on 90.685 acres² of land located in Delaware County, Ohio. S.T., Ex. 3.

Before this board, Polaris presented the appraisal and testimony of Mr. Robin Lorms, an MAI appraiser, who rendered an opinion of value of \$7,200,000 for the land only. Polaris further presented the testimony of Mr. Bryan A. Ross, a civil engineer employed by Advance Civil Design; Mr. Thomas M. Warner, project engineer and managing partner of Advance Civil Design; and Ms. Michelle Galaida, tax consultant employed by Deloitte & Touche. The BOE presented the testimony of Mr. Sam Koon, an MAI appraiser, who opined a value of \$21,000,000 for the subject's land and improvements.

We begin our review of the evidence by noting that a party who asserts a right to an increase or decrease in the value of real property has the burden to prove its right to the value 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. Consequently, it is incumbent upon an appellant challenging the decision of the board of revision to come forward and offer evidence that demonstrates

² The appellee BOE's appraiser describes the property as 90.687 acres. Ex. A at 27. The appellant's appraiser describes the subject to be 83.086 acres; however, said description does not include the fifth parcel, 318-442-02-024-000, containing approximately 8 acres. Ex. 13 at 2.

its right to the value sought. *Cleveland Bd. of Edn.*, supra; *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493.

It is not enough, however, to simply come forward with some evidence of value. Neither is it sufficient to grant the requested increase or decrease merely because no evidence is adduced in contradiction to the claim. *Western Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340. In short, there is a burden of persuasion that rests with the appellant to convince this board that the appellant is entitled to the value which it seeks. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325. Once the appellant presents competent and probative evidence of value, other parties asserting a different value then have the corresponding burden of providing evidence that rebuts appellant's evidence of value. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493. Accordingly, this board must proceed to examine the available record and to determine value based upon the evidence before it. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, we will determine the weight and credibility to be accorded to the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13. We proceed by examining the evidence of the subject's true value as presented by the parties.

When determining value, the Ohio Supreme Court has long held 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. Absent a recent sale, as in the instant matter, true value in money can be calculated by applying any of three alternative methods provided for in Ohio Adm. Code 5703-25-07: 1) the market data approach, which compares recent sales of comparable properties, 2) the income approach, which capitalizes the net income attributable to the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value.

Polaris argues that the court's decision in *Funtime v. Wilkins*, 105 Ohio St.3d 74, 2004-Ohio-6890, dictates that all improvements situated upon the subject property should be classified as "business fixtures" under R.C. 5701.03(B), and hence, not subject to taxation as real property. Polaris asks this board to value the subject property, in essence, as land only.

The issue before the court in *Funtime* was whether construction contracts relating to the repair and installation of amusement park rides and accessory structures should be excepted from sales tax liability as real property pursuant to R.C. 5739.01(B)(5).³ The court held that the rides and accessory structures were "business fixtures" under R.C. 5701.03(B), and therefore constituted personal property not entitled to the sales and use tax exception. The court analyzed the statutory definitions of real property, building, fixture, improvement, and structure found in R.C. 5701.02, and the definitions of personal property and business fixture found in R.C. 5701.03.

³ R.C. 5739.01(B)(5) excepts from the sales tax provisions the incorporation of tangible personal property into a structure or improvement on and becoming a part of real property.

R.C. 5701.02 provides in pertinent part:

“(A) ‘Real property,’ ‘realty,’ and ‘land’ include land itself, *** 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, ***.

“(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 had structural integrity independent of the tangible personal property, if any, it is designed to shelter. ***

“(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 or agricultural products, fences, and walls.”

R.C. 5701.03 provides in pertinent part:

“(A) ‘Personal property’ includes every tangible thing that is subject to ownership, whether animate or inanimate, including a business fixture, and that does not constitute real property as defined in section 5701.02 of the Revised Code. ***

“(B) ‘Business 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 business conducted by the occupant on the premises and not the realty. 'Business fixture' includes, but is not limited to, machinery, equipment, signs, storage bins and tanks, whether above or below ground, and broadcasting, transportation, transmission, and distribution systems, whether above or below ground. 'Business fixture' also means those portions of buildings, structures, and improvements that are specially designed, constructed, and used for the business conducted in the building, structure, or improvement, including, but not limited to, foundations and supports for machinery and equipment. 'Business fixture' does not include fixtures that are common to buildings, including, but not limited to, heating, ventilation, and air conditioning systems primarily used to control the environment for people or animals, tanks, towers, and lines for potable water or water for fire control, electrical and communication lines, and other fixtures that primarily benefit the realty and not the business conducted by the occupant on the premises."

Counsel for the BOE has filed an expansive brief chronicling the history of case law and legislative enactments relating to the classification of real and personal property. The BOE argues that classification of property is necessarily governed by Section 2, Article XII of the Ohio Constitution, which provides that "[l]and and improvements thereon shall be taxed by uniform rule according to value."

The statutory transcript certified by the auditor includes "property record cards" for the subject parcels; however, none of the exhibits describe the improvements upon the land.⁴ S.T. at 3. The BOE's appraiser, Mr. Koon, has included a foundation sketch of the 46 structures on the subject property. Ex. A, page facing 30. Mr. Koon further describes the improvements as follows:

⁴ Entitled "Parcel Maintenance," the information on the property record cards is minimal. Ohio Adm. Code Section 5703-25-09 requires the auditor to maintain property record cards that describe, among other things, building details and construction features, dimensions, and the like.

"The subject improvements have been designed for use as a regional, outdoor amphitheater and entertainment complex. The semi-circular amphitheater represents the core structure, around which all other surrounding improvements have been constructed. *** There are two wings which attach to either side of the stage. The west wing consists of a cafeteria and six fully finished dressing rooms, each with its own full bath. A patio and deck area extends from the west wing, and attaches to a hospitality building, which is essentially a large, open room which is used for small meetings and events. The hospitality building is approximately 900 square feet in area. The east wing consists of administrative offices and the video control room.

"In addition to the above-described improvements, that facility features several maintenance buildings which service the property. These include a pole building and a steel framed maintenance building to the rear of the amphitheater, as well as a metal Quonset-style storage building both to the rear of the amphitheater and on the south side of the parking lot.

"The amphitheater structure exhibits a nearly semi-circular shape and consists primarily of masonry construction. It has a sloping, poured concrete floor, tilt-up concrete panel walls, and poured concrete support columns. The roof consists of a pre-engineered metal truss system under metal decking with a rubber membrane cover. There is a metal panel parapet around the perimeter of the roof which houses several large video projection screens which service the amphitheater's uncovered, rear lawn seating. Additionally, two large video projection screens are mounted on the inside wall of the amphitheater and service the seated area. The amphitheater's lawn area is contained with a wood fence. To the rear of the amphitheater there are eight, (sic) dock-height loading bays which service the stage area from the rear.

"There are two main food concession buildings which are located on either side of the amphitheater. These structures are nearly identical in design and construction quality. They consist of single story, concrete block structures on concrete slab foundations. Each has a gable-style, asphalt shingle roof. These buildings are designed with food sales areas to the front, with

food preparation and cool/dry storage rooms to the rear. There is additional office space to the rear of the west concession building. These facilities are heated and cooled via gas-fired heat/electrically-fired HVAC units.

"There are men's/women's restroom facilities located adjacent to each of the main concession buildings. These facilities are contained within one story, concrete block buildings. Additional building improvements include medical/first aid, police, and equipment storage buildings. There is a V.I.P. covered outdoor bar/lounge area to the east of the amphitheater with separate restroom facilities. The facility's main ticket sales building consists of a one story structure located at the amphitheater's main entrance. There is also an ATM machine and several vending machines adjacent to the front ticket sales building. There are multiple kiosk-type, open, wood frame concession booths and memorabilia sales buildings which line the main entrances to the amphitheater areas.

"The interior finish of the facility's office, administrative, and back-stage video, sound, dining, and dressing rooms primarily consists of a combination of carpeted and/or vinyl flooring with vinyl basing, painted drywall walls, drywall or acoustical panel ceilings with a combination of recessed incandescent and recessed fluorescent lighting.

"Site improvements include two main asphalt-paved parking areas, as well as asphalt paved walkways providing pedestrians with access to both sides of the amphitheater. There is a substantial amount of asphalt paved parking and truck-turnaround areas to the rear of the amphitheater's stage. It is significant to note that a substantial amount of required parking for the amphitheater is not paved and consists of driveways through grassy parking areas." Id. at 30-32.

The threshold issue before us is whether the amphitheater's facilities should be valued as real property by the auditor.

Setting aside the issue of whether the facilities are business fixtures under R.C. 5701.03(B) for the moment, we find the facilities described above are real property under R.C. 5701.02. The amphitheater stage, loading docks, attached wings,

concession facilities, merchandising facilities, restroom facilities, storage facilities, video production facilities, administrative offices, VIP lounges, outdoor lounges, storage facilities, maintenance facilities, cafeteria, hospitality facility, first aid and public safety facilities, paved parking lots and walkways, and the like all constitute buildings, improvements, and/or structures as defined by R.C. 5701.02, as they all are of "permanent fabrication or construction," affixed to the land, intended as "habitation for people, animals or a shelter for tangible personal property" and furthermore "increase the utilization or enjoyment of the land."

R.C. 5701.02(A) defines realty, with the caveat: "unless otherwise specified in this section or section 5701.03 of the Revised Code." We next turn to the issue of whether the buildings, improvements, and/or structures on the subject property should be classified as business fixtures. We find that they should not.

R.C. 5701.03(B) provides "'[b]usiness fixture' means an item of tangible personal property that has become permanently attached or affixed to the land, ***." The evidence before us concerning the nature of the buildings, improvements, and structures fails to demonstrate that any of them are items of personal property that have become permanently attached to the subject property. The buildings, improvements, and structures before us are borne from permanent fabrication and construction upon the property (e.g., brick and mortar construction "consisting of foundations, walls, columns, girders, beams, floors, and a roof"); rather than item(s) of personal property (e.g., "machinery, equipment, signs, storage bins and tanks, ***,

broadcasting, transportation, transmission, and distribution systems") that have been otherwise delivered and permanently attached to the land.

It is unnecessary to consider whether or not the buildings, improvements and structures before us "primarily benefit the business conducted" on the property because the brick and mortar buildings, improvements and structures fail to constitute "[an] item of personal property" under R.C. 5701.03(B) in the first instance.

Furthermore, there is no evidence before us that would enable us to conclude that there are any portions of buildings, structures or improvements on the subject property specifically constructed for use in business, such as foundations and supports for machinery and equipment. Within the definition of business fixture, R.C. 5701.03(B) provides: "Business fixture" also means those portions of buildings, structures, and improvements that are specially designed, constructed, and used for the business conducted in the building, structure, or improvement." Polaris mis-interprets said portion of the definition and argues that because the subject property is put to a non-commercial use, any and all buildings, any and all structures and any and all improvements "are specially designed, constructed and used in business" and are therefore business fixtures. We disagree.

As the Ohio Supreme Court held in *Funtime*, supra, R.C. 5701.02 and 5701.03 must be interpreted in *pari materia*. The distinction between real property and personal property does not hinge upon the singular distinction of whether property is used in business or a commercial venture. Rather, only the distinction of whether an item of personal property constitutes a "fixture" under R.C. 5701.02(C) and is

therefore defined as real property, or whether an item of personal property constitutes a "business fixture" under R.C. 5701.03(B) and is therefore defined as personal property does hinge upon the determination of whether the item of personal property is used in business.

~~The limited inclusion of language by the legislature in the definition of~~
business fixture permits foundations and supports specifically designed for machinery, equipment, and the like to be classified as business fixtures.⁵ If we were to accept Polaris' argument, the definition of business fixture would necessarily eclipse all the definitions of real property found in R.C. 5701.02 and require that all buildings, structures and improvements (e.g., car washes, office buildings, retail stores, banks, gas stations, indoor and outdoor arenas) be classified as personal property solely because they are all used for a commercial purpose. We fail to read the statutory enactments and the court's holdings to produce this result.

Based upon the evidence before us, we find that the buildings, structures and improvements situated upon the subject property are properly classified and valued as realty pursuant to Ohio law.

In support of its contention of value, Polaris offered at this board's evidentiary hearing the testimony and written appraisal report of Mr. Robin Lorms. Mr. Lorms has limited his analysis to the valuation of the subject's land only. We are

⁵ All of the examples cited within the definition of business fixture found in R.C. 5701.03(B) support the conclusion that business fixtures are items of personal property that have been brought upon the land and otherwise affixed (i.e., machinery, equipment, signs, storage bins and tanks; broadcasting, transportation, transmission, and distribution systems).

unable to assign any more than limited weight to the report and opinion of Mr. Lorms because he has failed to value the buildings, improvements and structures on the subject property.

Even if we were to rely upon Mr. Lorms' opinion of value for the subject, we are concerned about his failure to consider the subject's current use in determining the highest and best use for the subject property. Mr. Lorms' highest and best use analysis concludes that "no use of the site would be as profitable as office use." Ex. 13 at 33.

The Appraisal of Real Estate (12th Ed.) defines "highest and best use" as:

"[T]he reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and results in the highest value." Id. at 297.

The text further describes:

"Appraisal theory holds that as long as the value of a property as improved is greater than the value of the site unimproved, the highest and best use is use of the property as improved. Once the value of the vacant land exceeds the value of the improved property, the highest and best use becomes use of the land as though vacant." Id. at 298.

The subject property is improved with a regional outdoor amphitheater. Any analysis of the subject's highest and best use must necessarily include a determination that the value of the vacant land would exceed the value of the property as improved. Before this board, Mr. Lorms acknowledged that he did not endeavor to value the subject property as improved. H.R. I at 170-181. Furthermore, Mr. Lorms

testified that he had not formed an opinion that the subject property's value, if vacant, would exceed its valuation as improved. Id.

Based on the evidence before us presented by Polaris, we fail to see any discussion or consideration of the subject's valuation as improved. Furthermore, we are unable to conclude that the value of the subject property as vacant necessarily exceeds the value of the property with its current improvements. Therefore, we find Mr. Lorms' analysis premised upon the highest and best use of the subject as vacant land for redevelopment as office space fails to constitute competent and probative evidence of value.

Polaris additionally provided the testimony of two civil engineers who provided their opinions and documentary evidence concerning how the subject property might be redeveloped and reconfigured as office-space development. Because Polaris has failed to demonstrate that the subject's highest and best use of the property, if vacant, would exceed its value as improved, we must necessarily conclude that evidence concerning possible redevelopment for an alternative use fails to constitute competent and probative evidence of the subject's value on January 1, 2003.

Polaris additionally provided testimony and evidence concerning proposed changes to its personal property tax returns, assuming the buildings, structures and improvements on the subject property were reclassified as business fixtures. As the instant appeal comes to this board through a complaint filed before the BOR pursuant to R.C. 5715.19, our jurisdiction is limited to determining the value of the subject real property as it appears on the 2003 tax list and duplicate. See R.C.

5715.19(A)(1)(d). Furthermore, there is nothing in the record to suggest that Polaris has sought any reassessment for its previously filed personal property tax returns with the Tax Commissioner, and hence, there is no final determination of the Tax Commissioner from which Polaris may appeal.⁶ Therefore, we are without the requisite jurisdiction to assess or otherwise determine the accuracy of Polaris' proposed personal property returns, and further find that the testimony and evidence regarding Polaris' proposed returns fail to constitute competent and probative evidence of value for the subject parcels before us.

The BOE presented the written appraisal report and testimony of Mr. Sam Koon. Mr. Koon's appraisal report was prepared with an "as of" date of January 1, 2003. Ex. A at 62. Mr. Koon ultimately arrived at an opinion of value of \$21,000,000 for the subject property. Ex. B at 62, H.R. II at 15.⁷

Given the special use and nature of the subject's improvements as a regional outdoor amphitheater, Mr. Koon testified that he was unable to identify any comparable sales data or comparable economic rental data from the sale or lease of other amphitheaters. H.R. II at 16, Ex. A at 59-60. Therefore, Mr. Koon's opinion of value is limited to his conclusions derived from his cost approach valuation of the subject.

⁶ R.C. 5717.02 sets forth certain prerequisites necessary to invoke the jurisdiction of this board from a final determination of the Tax Commissioner, providing in pertinent part:

"Such appeals shall be taken by the filing of a notice of appeal with the board, and with the tax commissioner *** within sixty days after notice of the *** determination *** by the commissioner *** has been given or otherwise evidenced as required by law."

⁷ At hearing before this board, Mr. Koon identified various corrected pages to his appraisal report, marked as Exhibit B.

In his cost approach, Mr. Koon began by arriving at a raw land value by considering five comparable land sales that occurred between August 2000 and July 2005. All of the comparable sales were in close proximity to the subject property, utilizing the Polaris Parkway/I-71 freeway interchange. The price per acre paid for the comparables ranged between \$85,237 and \$151,146 per acre. After making adjustments to the comparable sales, Mr. Koon developed a range of \$95,000 to \$110,000 per acre. Utilizing the lower end of the range of value, Mr. Koon opined to a land value of \$95,000 per acre for the subject, or \$8,600,000 for the subject's 90.687 acres. Ex. A at 39-53.

In estimating the subject's replacement cost (as new), Mr. Koon used the actual construction costs as supplied by the subject's developer. Ex. A at 54. Mr. Koon testified that the subject's special use necessitates reliance upon the actual costs to construct, given information pertaining to the reproduction costs of an outdoor amphitheater is not included in the majority of national cost indexes. Id.

Mr. Koon analyzed the subject's 1994 construction costs, which totaled \$9,629,200 for both the costs of site and building improvements. Relying upon his analysis of trend multipliers for the subject's regional location, Mr. Koon increased the 1994 site and improvement costs by 27%, to arrive at a cost to construct value of \$12,229,084 for January 1, 2003. Id. at 54. Mr. Koon then included the cost to construct additional special use improvements (i.e., outdoor grill and a patio/deck area) made upon the subject property after 1994, again utilizing trend multipliers to determine the costs relevant to 2003. The additional cost of the new special use

improvements was estimated to be \$68,296. Id. at 55. Additionally, Mr. Koon included the costs to construct additional improvements (i.e., maintenance building and concession kiosk buildings) made upon the subject property after 1994, utilizing Marshal Valuation Service reproduction cost estimates relevant to 2003. The additional costs of the new improvements were estimated to be \$267,446. Combining the updated cost to construct the original facility, together with additional improvements, Mr. Koon arrived at a value of \$12,600,000 for the hard costs associated with the subject for January 1, 2003. Id. at 55, H.R. II at 14.

Mr. Koon next estimated the soft costs (i.e., architectural, engineering fees, financing costs, various legal and administrative fees, and the like), by utilizing 10% of the total hard cost of the development, or \$1,260,000. Mr. Koon fixed entrepreneurial profit at \$1,100,000. In sum, Mr. Koon's total reproduction cost of the subject property was \$14,960,000. Id. at 56, H.R. II at 14.

To estimate accrued depreciation of the improvements, Mr. Koon assigned an economic life of 40 years to the buildings that consist of masonry construction, assigned an economic life of 35 years for the steel frame and wood pole buildings, and assigned an economic life of 15 years to the remaining smaller wood frame buildings pursuant to the indexes provided by the Marshall Valuation Service. Ex. B at 57. The subject's original improvements were approximately eight years old on tax lien date. Mr. Koon assigned depreciation percentages to the various grades of buildings, based upon their economic life and their age as of January 1, 2003. The sum total of depreciation was estimated at \$2,588,079. Id., H.R. II at 14.

In conclusion, Mr. Koon arrived at a depreciated value for all improvements of \$12,371,921. After adding his valuation of the subject's land (\$8,600,000), Mr. Koon arrived at a final value of \$21,000,000 for the subject property as of January 1, 2003. Ex. B at 58, H.R. II at 15.

As described above, the county auditor's and BOR's valuation of the subject property for January 1, 2003 is \$20,734,700. Mr. Koon's opinion of \$21,000,000 for the subject is nearly the same, and it provides support for such value. In addition, in its brief, the BOE urges this board to leave the auditor's and BOR's value unchanged. BOE brief at 86.

Based upon the record and the evidence before us, we hold that Polaris has not met its burden of demonstrating the subject property's fair market value as of tax lien date. We further find that the evidence of value provided by the BOE is supportive of the original values assigned to the subject property by the auditor and affirmed by the Delaware County Board of Revision. Therefore, we find the value of the subject as of January 1, 2003 to be:

Parcel 318-442-02-025-001	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 3,666,700	\$1,283,350
BLDG	\$ 5,668,400	\$1,983,940
TOTAL	\$ 9,335,100	\$3,267,290
 Parcel 318-442-02-025-918	 <u>TRUE VALUE</u>	 <u>TAXABLE VALUE</u>
LAND	\$ 3,224,200	\$1,128,470
BLDG	\$ 0	\$ 0
TOTAL	\$ 3,224,200	\$1,128,470
 Parcel 318-442-02-025-000	 <u>TRUE VALUE</u>	 <u>TAXABLE VALUE</u>
LAND	\$ 1,102,300	\$ 385,810
BLDG	\$ 0	\$ 0
TOTAL	\$ 1,102,300	\$ 385,810

Parcel 318-442-02-025-919	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 5,688,700	\$1,991,050
BLDG	\$ 1,258,700	\$ 440,550
TOTAL	\$ 6,947,400	\$2,431,600

Parcel 318-442-02-024-000	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 117,200	\$ 41,020
BLDG	\$ 8,500	\$ 2,980
TOTAL	\$ 125,700	\$ 44,000

Grand Totals \$20,734,700 \$7,257,170

It is the decision and order of the Board of Tax Appeals that the Delaware County Auditor shall list and assess the subject property in conformity with this decision. It is further ordered that this value be carried forward in accordance to law.

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

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing NOTICE OF APPEAL was mailed via Certified United States Mail, postage prepaid, to Dave Yost, Prosecuting Attorney, 140 North Sandusky Street, Delaware, Ohio 43015, Attorney for Appellees, Delaware County Board of Revision and County Auditor; James R. Gorry, Rich, Crites & Dittmer, LLC, 300 East Broad Street, Suite 300, Columbus, Ohio 43215, Attorney for Appellee Board of Education of the Olentangy Local Schools and Marc Dann, Ohio Attorney General, State Office Tower, 17th Floor, 30 East Broad Street, Columbus, Ohio 43215-3428, Attorney for Appellee Tax Commissioner of the State of Ohio and the Tax Commissioner of the State of Ohio, 30 East Broad Street, 22nd Floor, Columbus, Ohio 43215 on this 22nd day of February 2007.



Todd W. Sleggs, Esq. (0040921)

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OHIO BOARD OF TAX APPEALS

11765-03

Polaris Amphitheater Concerts, Inc.,)	CASE NO. 2004-V-1294
)	
Appellant,	)	(REAL PROPERTY TAX)
)	
vs.	)	DECISION AND ORDER
)	
Delaware County Board of Revision, the)	
Delaware County Auditor, and the)	
Board of Education of the Olentangy Local)	
Schools,)	
)	
Appellees.)	

APPEARANCES:

- For Appellant - Sleggs, Danzinger & Gill, Co., LPA
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820 West Superior Ave.
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- For the County Appellees - Dave Yost
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- For the Appellee BOE - Rich, Crites & Dittmer, LLC
James R. Gorry
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Suite 300
Columbus, OH 43215-3452

Entered **JAN 26 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 Polaris Amphitheater Concerts, Inc. ("Polaris") from a decision of the Delaware County Board of Revision ("BOR"). In said decision, the BOR determined the true and taxable values of the subject property

for tax year 2003 originally established by the Delaware County Auditor ("auditor").

should remain as follows:

Parcel 318-442-02-025-001	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 3,666,700	\$1,283,350
BLDG	\$ 5,668,400	\$1,983,940
TOTAL	\$ 9,335,100	\$3,267,290
<hr/>		
Parcel 318-442-02-025-918	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 3,224,200	\$1,128,470
BLDG	\$ 0	\$ 0
TOTAL	\$ 3,224,200	\$1,128,470
Parcel 318-442-02-025-000	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 1,102,300	\$ 385,810
BLDG	\$ 0	\$ 0
TOTAL	\$ 1,102,300	\$ 385,810
Parcel 318-442-02-025-919	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 5,688,700	\$1,991,050
BLDG	\$ 1,258,700	\$ 440,550
TOTAL	\$ 6,947,400	\$2,431,600
Parcel 318-442-02-024-000	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 117,200	\$ 41,020
BLDG	\$ 8,500	\$ 2,980
TOTAL	\$ 125,700	\$ 44,000
Grand Totals	\$20,734,700	\$7,257,170

Polaris requests that the subject property's improvements be reclassified as personalty and for the remaining land to be valued at \$7,200,000.¹ The Olentangy Local Schools Board of Education ("BOE") requests that the subject property's value remain unchanged as originally determined by the auditor. We now consider this matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the

¹ In its brief, Polaris notes that it does not contest the value of the fifth parcel, 318-442-02-024-000. Brief of appellant, at 5, footnote 2.

auditor, and the evidence presented at this board's evidentiary hearing ("H.R. I" and "H.R. II").

The subject property is an outdoor amphitheater constructed in 1994 and is located on 90.685 acres² of land located in Delaware County, Ohio. S.T., Ex. 3.

Before this board, Polaris presented the appraisal and testimony of Mr. Robin Lorms, an MAI appraiser, who rendered an opinion of value of \$7,200,000 for the land only. Polaris further presented the testimony of Mr. Bryan A. Ross, a civil engineer employed by Advance Civil Design; Mr. Thomas M. Warner, project engineer and managing partner of Advance Civil Design; and Ms. Michelle Galaida, tax consultant employed by Deloitte & Touche. The BOE presented the testimony of Mr. Sam Koon, an MAI appraiser, who opined a value of \$21,000,000 for the subject's land and improvements.

We begin our review of the evidence by noting that a party who asserts a right to an increase or decrease in the value of real property has the burden to prove its right to the value 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. Consequently, it is incumbent upon an appellant challenging the decision of the board of revision to come forward and offer evidence that demonstrates

² The appellee BOE's appraiser describes the property as 90.687 acres. Ex. A at 27. The appellant's appraiser describes the subject to be 83.086 acres; however, said description does not include the fifth parcel, 318-442-02-024-000, containing approximately 8 acres. Ex. 13 at 2.

its right to the value sought. *Cleveland Bd. of Edn.*, supra; *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493.

It is not enough, however, to simply come forward with some evidence of value. Neither is it sufficient to grant the requested increase or decrease merely because no evidence is adduced in contradiction to the claim. *Western Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340. In short, there is a burden of persuasion that rests with the appellant to convince this board that the appellant is entitled to the value which it seeks. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325. Once the appellant presents competent and probative evidence of value, other parties asserting a different value then have the corresponding burden of providing evidence that rebuts appellant's evidence of value. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493. Accordingly, this board must proceed to examine the available record and to determine value based upon the evidence before it. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, we will determine the weight and credibility to be accorded to the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13. We proceed by examining the evidence of the subject's true value as presented by the parties.

When determining value, the Ohio Supreme Court has long held 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. Absent a recent sale, as in the instant matter, true value in money can be calculated by applying any of three alternative methods provided for in Ohio Adm. Code 5703-25-07: 1) the market data approach, which compares recent sales of comparable properties, 2) the income approach, which capitalizes the net income attributable to the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value.

Polaris argues that the court's decision in *Funtime v. Wilkins*, 105 Ohio St.3d 74, 2004-Ohio-6890, dictates that all improvements situated upon the subject property should be classified as "business fixtures" under R.C. 5701.03(B), and hence, not subject to taxation as real property. Polaris asks this board to value the subject property, in essence, as land only.

The issue before the court in *Funtime* was whether construction contracts relating to the repair and installation of amusement park rides and accessory structures should be excepted from sales tax liability as real property pursuant to R.C. 5739.01(B)(5).³ The court held that the rides and accessory structures were "business fixtures" under R.C. 5701.03(B), and therefore constituted personal property not entitled to the sales and use tax exception. The court analyzed the statutory definitions of real property, building, fixture, improvement, and structure found in R.C. 5701.02, and the definitions of personal property and business fixture found in R.C. 5701.03.

³ R.C. 5739.01(B)(5) excepts from the sales tax provisions the incorporation of tangible personal property into a structure or improvement on and becoming a part of real property.

R.C. 5701.02 provides in pertinent part:

“(A) ‘Real property,’ ‘realty,’ and ‘land’ include land itself, *** 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, ***.

“(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 had structural integrity independent of the tangible personal property, if any, it is designed to shelter. ***

“(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 or agricultural products, fences, and walls.”

R.C. 5701.03 provides in pertinent part:

“(A) ‘Personal property includes every tangible thing that is subject to ownership, whether animate or inanimate, including a business fixture, and that does not constitute real property as defined in section 5701.02 of the Revised Code. ***

“(B) ‘Business 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 business conducted by the occupant on the premises and not the realty. 'Business fixture' includes, but is not limited to, machinery, equipment, signs, storage bins and tanks, whether above or below ground, and broadcasting, transportation, transmission, and distribution systems, whether above or below ground. 'Business fixture' also means those portions of buildings, structures, and improvements that are specially designed, constructed, and used for the business conducted in the building, structure, or improvement, including, but not limited to, foundations and supports for machinery and equipment. 'Business fixture' does not include fixtures that are common to buildings, including, but not limited to, heating, ventilation, and air conditioning systems primarily used to control the environment for people or animals, tanks, towers, and lines for potable water or water for fire control, electrical and communication lines, and other fixtures that primarily benefit the realty and not the business conducted by the occupant on the premises."

Counsel for the BOE has filed an expansive brief chronicling the history of case law and legislative enactments relating to the classification of real and personal property. The BOE argues that classification of property is necessarily governed by Section 2, Article XII of the Ohio Constitution, which provides that "[l]and and improvements thereon shall be taxed by uniform rule according to value."

The statutory transcript certified by the auditor includes "property record cards" for the subject parcels; however, none of the exhibits describe the improvements upon the land.⁴ S.T. at 3. The BOE's appraiser, Mr. Koon, has included a foundation sketch of the 46 structures on the subject property. Ex. A, page facing 30. Mr. Koon further describes the improvements as follows:

⁴ Entitled "Parcel Maintenance," the information on the property record cards is minimal. Ohio Adm. Code Section 5703-25-09 requires the auditor to maintain property record cards that describe, among other things, building details and construction features, dimensions, and the like.

"The subject improvements have been designed for use as a regional, outdoor amphitheater and entertainment complex. The semi-circular amphitheater represents the core structure, around which all other surrounding improvements have been constructed. *** There are two wings which attach to either side of the stage. The west wing consists of a cafeteria and six fully finished dressing rooms, each with its own full bath. A patio and deck area extends from the west wing, and attaches to a hospitality building, which is essentially a large, open room which is used for small meetings and events. The hospitality building is approximately 900 square feet in area. The east wing consists of administrative offices and the video control room.

"In addition to the above-described improvements, that facility features several maintenance buildings which service the property. These include a pole building and a steel framed maintenance building to the rear of the amphitheater, as well as a metal Quonset-style storage building both to the rear of the amphitheater and on the south side of the parking lot.

"The amphitheater structure exhibits a nearly semi-circular shape and consists primarily of masonry construction. It has a sloping, poured concrete floor, tilt-up concrete panel walls, and poured concrete support columns. The roof consists of a pre-engineered metal truss system under metal decking with a rubber membrane cover. There is a metal panel parapet around the perimeter of the roof which houses several large video projection screens which service the amphitheater's uncovered, rear lawn seating. Additionally, two large video projection screens are mounted on the inside wall of the amphitheater and service the seated area. The amphitheater's lawn area is contained with a wood fence. To the rear of the amphitheater there are eight, (sic) dock-height loading bays which service the stage area from the rear.

"There are two main food concession buildings which are located on either side of the amphitheater. These structures are nearly identical in design and construction quality. They consist of single story, concrete block structures on concrete slab foundations. Each has a gable-style, asphalt shingle roof. These buildings are designed with food sales areas to the front, with

food preparation and cool/dry storage rooms to the rear. There is additional office space to the rear of the west concession building. These facilities are heated and cooled via gas-fired heat/electrically-fired HVAC units.

"There are men's/women's restroom facilities located adjacent to each of the main concession buildings. These facilities are contained within one story, concrete block buildings. Additional building improvements include medical/first aid, police, and equipment storage buildings. There is a VIP covered outdoor bar/lounge area to the east of the amphitheater with separate restroom facilities. The facility's main ticket sales building consists of a one story structure located at the amphitheater's main entrance. There is also an ATM machine and several vending machines adjacent to the front ticket sales building. There are multiple kiosk-type, open, wood frame concession booths and memorabilia sales buildings which line the main entrances to the amphitheater areas.

"The interior finish of the facility's office, administrative, and back-stage video, sound, dining, and dressing rooms primarily consists of a combination of carpeted and/or vinyl flooring with vinyl basing, painted drywall walls, drywall or acoustical panel ceilings with a combination of recessed incandescent and recessed fluorescent lighting.

"Site improvements include two main asphalt-paved parking areas, as well as asphalt paved walkways providing pedestrians with access to both sides of the amphitheater. There is a substantial amount of asphalt paved parking and truck-turnaround areas to the rear of the amphitheater's stage. It is significant to note that a substantial amount of required parking for the amphitheater is not paved and consists of driveways through grassy parking areas." Id. at 30-32.

The threshold issue before us is whether the amphitheater's facilities should be valued as real property by the auditor.

Setting aside the issue of whether the facilities are business fixtures under R.C. 5701.03(B) for the moment, we find the facilities described above are real property under R.C. 5701.02. The amphitheater stage, loading docks, attached wings,

concession facilities, merchandising facilities, restroom facilities, storage facilities, video production facilities, administrative offices, VIP lounges, outdoor lounges, storage facilities, maintenance facilities, cafeteria, hospitality facility, first aid and public safety facilities, paved parking lots and walkways, and the like all constitute buildings, improvements, and/or structures as defined by R.C. 5701.02, as they all are of "permanent fabrication or construction," affixed to the land, intended as "habitation for people, animals or a shelter for tangible personal property" and furthermore "increase the utilization or enjoyment of the land."

R.C. 5701.02(A) defines realty, with the caveat: "unless otherwise specified in this section or section 5701.03 of the Revised Code." We next turn to the issue of whether the buildings, improvements, and/or structures on the subject property should be classified as business fixtures. We find that they should not.

R.C. 5701.03(B) provides "[b]usiness fixture' means an item of tangible personal property that has become permanently attached or affixed to the land, ***." The evidence before us concerning the nature of the buildings, improvements, and structures fails to demonstrate that any of them are items of personal property that have become permanently attached to the subject property. The buildings, improvements, and structures before us are borne from permanent fabrication and construction upon the property (e.g., brick and mortar construction "consisting of foundations, walls, columns, girders, beams, floors, and a roof"), rather than item(s) of personal property (e.g., "machinery, equipment, signs, storage bins and tanks, ***,

broadcasting, transportation, transmission, and distribution systems”) that have been otherwise delivered and permanently attached to the land.

It is unnecessary to consider whether or not the buildings, improvements and structures before us “primarily benefit the business conducted” on the property because the brick and mortar buildings, improvements and structures fail to constitute “[an] item of personal property” under R.C. 5701.03(B) in the first instance.

Furthermore, there is no evidence before us that would enable us to conclude that there are any portions of buildings, structures or improvements on the subject property specifically constructed for use in business, such as foundations and supports for machinery and equipment. Within the definition of business fixture, R.C. 5701.03(B) provides: “‘Business fixture’ also means those portions of buildings, structures, and improvements that are specially designed, constructed, and used for the business conducted in the building, structure, or improvement.” Polaris mis-interprets said portion of the definition and argues that because the subject property is put to a commercial use, any and all buildings, any and all structures and any and all improvements “are specially designed, constructed and used in business” and are therefore business fixtures. We disagree.

As the Ohio Supreme Court held in *Funtime*, supra, R.C. 5701.02 and 5701.03 must be interpreted in pari materia. The distinction between real property and personal property does not hinge upon the singular distinction of whether property is used in business or a commercial venture. Rather, only the distinction of whether an item of personal property constitutes a “fixture” under R.C. 5701.02(C) and is

therefore defined as real property, or whether an item of personal property constitutes a "business fixture" under R.C. 5701.03(B) and is therefore defined as personal property does hinge upon the determination of whether the item of personal property is used in business.

The limited inclusion of language by the legislature in the definition of business fixture permits foundations and supports specifically designed for machinery, equipment, and the like to be classified as business fixtures.⁵ If we were to accept Polaris' argument, the definition of business fixture would necessarily eclipse all the definitions of real property found in R.C. 5701.02 and require that all buildings, structures and improvements (e.g., car washes, office buildings, retail stores, banks, gas stations, indoor and outdoor arenas) be classified as personal property solely because they are all used for a commercial purpose. We fail to read the statutory enactments and the court's holdings to produce this result.

Based upon the evidence before us, we find that the buildings, structures and improvements situated upon the subject property are properly classified and valued as realty pursuant to Ohio law.

In support of its contention of value, Polaris offered at this board's evidentiary hearing the testimony and written appraisal report of Mr. Robin Lorms. Mr. Lorms has limited his analysis to the valuation of the subject's land only. We are

⁵ All of the examples cited within the definition of business fixture found in R.C. 5701.03(B) support the conclusion that business fixtures are items of personal property that have been brought upon the land and otherwise affixed (i.e., machinery, equipment, signs, storage bins and tanks; broadcasting, transportation, transmission, and distribution systems).

unable to assign any more than limited weight to the report and opinion of Mr. Lorms because he has failed to value the buildings, improvements and structures on the subject property.

Even if we were to rely upon Mr. Lorms' opinion of value for the subject, we are concerned about his failure to consider the subject's current use in determining the highest and best use for the subject property. Mr. Lorms' highest and best use analysis concludes that "no use of the site would be as profitable as office use." Ex. 13 at 33.

The Appraisal of Real Estate (12th Ed.) defines "highest and best use" as:

"[T]he reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and results in the highest value." Id. at 297.

The text further describes:

"Appraisal theory holds that as long as the value of a property as improved is greater than the value of the site unimproved, the highest and best use is use of the property as improved. Once the value of the vacant land exceeds the value of the improved property, the highest and best use becomes use of the land as though vacant." Id. at 298.

The subject property is improved with a regional outdoor amphitheater. Any analysis of the subject's highest and best use must necessarily include a determination that the value of the vacant land would exceed the value of the property as improved. Before this board, Mr. Lorms acknowledged that he did not endeavor to value the subject property as improved. H.R. I at 170-181. Furthermore, Mr. Lorms

testified that he had not formed an opinion that the subject property's value, if vacant, would exceed its valuation as improved. Id.

Based on the evidence before us presented by Polaris, we fail to see any discussion or consideration of the subject's valuation as improved. Furthermore, we are unable to conclude that the value of the subject property as vacant necessarily exceeds the value of the property with its current improvements. Therefore, we find Mr. Lorms' analysis premised upon the highest and best use of the subject as vacant land for redevelopment as office space fails to constitute competent and probative evidence of value.

Polaris additionally provided the testimony of two civil engineers who provided their opinions and documentary evidence concerning how the subject property might be redeveloped and reconfigured as office-space development. Because Polaris has failed to demonstrate that the subject's highest and best use of the property, if vacant, would exceed its value as improved, we must necessarily conclude that evidence concerning possible redevelopment for an alternative use fails to constitute competent and probative evidence of the subject's value on January 1, 2003.

Polaris additionally provided testimony and evidence concerning proposed changes to its personal property tax returns, assuming the buildings, structures and improvements on the subject property were reclassified as business fixtures. As the instant appeal comes to this board through a complaint filed before the BOR pursuant to R.C. 5715.19, our jurisdiction is limited to determining the value of the subject real property as it appears on the 2003 tax list and duplicate. See R.C.

5715.19(A)(1)(d). Furthermore, there is nothing in the record to suggest that Polaris has sought any reassessment for its previously filed personal property tax returns with the Tax Commissioner, and hence, there is no final determination of the Tax Commissioner from which Polaris may appeal.⁶ Therefore, we are without the requisite jurisdiction to assess or otherwise determine the accuracy of Polaris' proposed personal property returns, and further find that the testimony and evidence regarding Polaris' proposed returns fail to constitute competent and probative evidence of value for the subject parcels before us.

The BOE presented the written appraisal report and testimony of Mr. Sam Koon. Mr. Koon's appraisal report was prepared with an "as of" date of January 1, 2003. Ex. A at 62. Mr. Koon ultimately arrived at an opinion of value of \$21,000,000 for the subject property. Ex. B at 62, H.R. II at 15.⁷

Given the special use and nature of the subject's improvements as a regional outdoor amphitheater, Mr. Koon testified that he was unable to identify any comparable sales data or comparable economic rental data from the sale or lease of other amphitheaters. H.R. II at 16, Ex. A at 59-60. Therefore, Mr. Koon's opinion of value is limited to his conclusions derived from his cost approach valuation of the subject.

⁶ R.C. 5717.02 sets forth certain prerequisites necessary to invoke the jurisdiction of this board from a final determination of the Tax Commissioner, providing in pertinent part:

"Such appeals shall be taken by the filing of a notice of appeal with the board, and with the tax commissioner *** within sixty days after notice of the *** determination *** by the commissioner *** has been given or otherwise evidenced as required by law."

⁷ At hearing before this board, Mr. Koon identified various corrected pages to his appraisal report, marked as Exhibit B.

In his cost approach, Mr. Koon began by arriving at a raw land value by considering five comparable land sales that occurred between August 2000 and July 2005. All of the comparable sales were in close proximity to the subject property, utilizing the Polaris Parkway/I-71 freeway interchange. The price per acre paid for the comparables ranged between \$85,237 and \$151,146 per acre. After making adjustments to the comparable sales, Mr. Koon developed a range of \$95,000 to \$110,000 per acre. Utilizing the lower end of the range of value, Mr. Koon opined to a land value of \$95,000 per acre for the subject, or \$8,600,000 for the subject's 90.687 acres. Ex. A at 39-53.

In estimating the subject's replacement cost (as new), Mr. Koon used the actual construction costs as supplied by the subject's developer. Ex. A at 54. Mr. Koon testified that the subject's special use necessitates reliance upon the actual costs to construct, given information pertaining to the reproduction costs of an outdoor amphitheater is not included in the majority of national cost indexes. Id.

Mr. Koon analyzed the subject's 1994 construction costs, which totaled \$9,629,200 for both the costs of site and building improvements. Relying upon his analysis of trend multipliers for the subject's regional location, Mr. Koon increased the 1994 site and improvement costs by 27%, to arrive at a cost to construct value of \$12,229,084 for January 1, 2003. Id. at 54. Mr. Koon then included the cost to construct additional special use improvements (i.e., outdoor grill and a patio/deck area) made upon the subject property after 1994, again utilizing trend multipliers to determine the costs relevant to 2003. The additional cost of the new special use

improvements was estimated to be \$68,296. *Id.* at 55. Additionally, Mr. Koon included the costs to construct additional improvements (i.e., maintenance building and concession kiosk buildings) made upon the subject property after 1994, utilizing Marshal Valuation Service reproduction cost estimates relevant to 2003. The additional costs of the new improvements were estimated to be \$267,446. Combining the updated cost to construct the original facility, together with additional improvements, Mr. Koon arrived at a value of \$12,600,000 for the hard costs associated with the subject for January 1, 2003. *Id.* at 55, H.R. II at 14.

Mr. Koon next estimated the soft costs (i.e., architectural, engineering fees, financing costs, various legal and administrative fees, and the like), by utilizing 10% of the total hard cost of the development, or \$1,260,000. Mr. Koon fixed entrepreneurial profit at \$1,100,000. In sum, Mr. Koon's total reproduction cost of the subject property was \$14,960,000. *Id.* at 56, H.R. II at 14.

To estimate accrued depreciation of the improvements, Mr. Koon assigned an economic life of 40 years to the buildings that consist of masonry construction, assigned an economic life of 35 years for the steel frame and wood pole buildings, and assigned an economic life of 15 years to the remaining smaller wood frame buildings pursuant to the indexes provided by the Marshall Valuation Service. Ex. B at 57. The subject's original improvements were approximately eight years old on tax lien date. Mr. Koon assigned depreciation percentages to the various grades of buildings, based upon their economic life and their age as of January 1, 2003. The sum total of depreciation was estimated at \$2,588,079. *Id.*, H.R. II at 14.

In conclusion, Mr. Koon arrived at a depreciated value for all improvements of \$12,371,921. After adding his valuation of the subject's land (\$8,600,000), Mr. Koon arrived at a final value of \$21,000,000 for the subject property as of January 1, 2003. Ex. B at 58, H.R. II at 15.

As described above, the county auditor's and BOR's valuation of the subject property for January 1, 2003 is \$20,734,700. Mr. Koon's opinion of \$21,000,000 for the subject is nearly the same, and it provides support for such value. In addition, in its brief, the BOE urges this board to leave the auditor's and BOR's value unchanged. BOE brief at 86.

Based upon the record and the evidence before us, we hold that Polaris has not met its burden of demonstrating the subject property's fair market value as of tax lien date. We further find that the evidence of value provided by the BOE is supportive of the original values assigned to the subject property by the auditor and affirmed by the Delaware County Board of Revision. Therefore, we find the value of the subject as of January 1, 2003 to be:

Parcel 318-442-02-025-001	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 3,666,700	\$1,283,350
BLDG	\$ 5,668,400	\$1,983,940
TOTAL	\$ 9,335,100	\$3,267,290
Parcel 318-442-02-025-918	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 3,224,200	\$1,128,470
BLDG	\$ 0	\$ 0
TOTAL	\$ 3,224,200	\$1,128,470
Parcel 318-442-02-025-000	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 1,102,300	\$ 385,810
BLDG	\$ 0	\$ 0
TOTAL	\$ 1,102,300	\$ 385,810

Parcel 318-442-02-025-919	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 5,688,700	\$1,991,050
BLDG	\$ 1,258,700	\$ 440,550
TOTAL	\$ 6,947,400	\$2,431,600

Parcel 318-442-02-024-000	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$ 117,200	\$ 41,020
BLDG	\$ 8,500	\$ 2,980
TOTAL	\$ 125,700	\$ 44,000

Grand Totals	\$20,734,700	\$7,257,170
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It is the decision and order of the Board of Tax Appeals that the Delaware County Auditor shall list and assess the subject property in conformity with this decision. It is further ordered that this value be carried forward in accordance to law.

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



PAID
11/2/04 [signature]

RECEIVED OCT 29 2004

10/27/2004

TODD A. HANKS
DELAWARE COUNTY AUDITOR

Polaris Amphitheater Concerts, Inc.
c/o Walt Rapacz, Deloitte & Touche, LLP
127 Public Square, Ste 2500
Cleveland Ohio 44114

Dear Property Owner:

Upon consideration of a complaint presented to the Board of Revision regarding the valuation of real property for **tax year 2003**, and after investigation by the Board of Revision, the market value of the parcel(s) is(are) as listed below.

If you wish to appeal this decision an appeal may be made to the Ohio Board of Tax Appeals under the authority of Section 5717.01 of the Ohio Revised Code or to the Court of Common Pleas under the authority of Section 5717.05 of the Ohio Revised Code. You have 30 days from the date of this letter to do so. If this office can provide you with additional information on this matter please do not hesitate to contact us.

Case #:	Parcel(s)	Valuation:
04-60	318-442-02-025-001	9,335,100
	318-442-02-025-918	3,224,200
	318-442-02-025-000	1,102,300
	318-442-02-025-919	6,947,400
	318-442-02-024-000	125,700

cc:

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Suite 410
Cleveland Ohio
44113

140 NORTH SANDUSKY STREET, DELAWARE, OHIO 43015
PHONE: 740-833-2900

-45
Sleggs
File
Clean

twenty-five dollar fee, finds that the land would be land devoted exclusively to agricultural use for the current year if the board of revision finds the failure arose for good cause, the owner may file a complaint against that determination with the board as provided in section 5715.19 of the Revised Code on the grounds that the tract, lot, or parcel is land devoted exclusively to agricultural use because there was good cause for the owner's failure to file an initial or renewal application. If the board finds that there was such good cause, the application under this section shall be considered an application that was properly filed under section 5713.31 of the Revised Code.

(As enacted by H.B. 483, Laws 1988, effective March 29, 1988; as amended by H.B. 618, Laws 1988, effective September 9, 1988.)

§ 133-520

Sec. 5713.36. Application for valuation of land.—On or before the fifteenth of January of each year, the county auditor shall mail to each current owner of land that was valued as land devoted exclusively to agricultural use during the next preceding calendar year, an application for the valuation of such land as land devoted exclusively to an agricultural use for the current calendar year.

(As enacted by S.B. 423, Laws 1974; as amended by H.B. 618, Laws 1988, effective September 9, 1988.)

§ 133-540

Sec. 5713.37. Prohibition.—No person shall knowingly give any false information in an application filed under section 5713.31 of the Revised Code.

(As enacted by S.B. 423, Laws 1974; effective July 26, 1974.)

§ 133-560

Sec. 5713.38. Application for change of valuation of land.—Notwithstanding section 5713.31 of

CHAPTER 5715—BOARDS OF REVISION, EQUALIZATION OF ASSESSMENTS

§ 133-700

Caution: Sec. 5715.01, as reproduced immediately below, is effective through June 29, 2005. For provisions effective June 30, 2005, see below. CCH.

Sec. 5715.01. Assessment of real property; rules and procedure; county board of revision.—The tax commissioner shall direct and supervise the assessment for taxation of all real property. The commissioner shall adopt, prescribe, and promulgate rules for the determination of true value and taxable value of real property by uniform rule for such values and for the determination of the current agricultural use value of land devoted exclusively to agricultural use. The uniform rules shall prescribe methods of determining the true value and taxable

value of real property and shall also prescribe the method for determining the current agricultural use value of land devoted exclusively to agricultural use, which method shall reflect standard and modern appraisal techniques, that take into consideration the productivity of the soil under normal management practices, the average price patterns of the crops and products produced to determine the income potential to be capitalized, market value of the land for agricultural use, and other pertinent factors. The rules shall provide that in determining the true value of lands or improvements thereon for tax purposes, all facts and circumstances relating to the value of the property, its availability for the purposes for which it is constructed or being used, its obsolete character, if any, the income capacity of the property, if any, and any other factor that tends to prove its true value shall be used. The taxable value

of real property taxes paid by the owner based on the higher valuation, in excess of the property taxes that would have been due and payable had the land been valued on the basis of its agricultural use, shall be treated as an overpayment of real property taxes in the manner prescribed by section 5715.22 of the Revised Code.

(As enacted by H.B. 651, Laws 1975, effective November 26, 1975.)

§ 133-580

Sec. 5713.99. Penalty.—Whoever violates section 5713.37 of the Revised Code is guilty of a misdemeanor of the first degree.

(As enacted by S.B. 423, Laws 1974; effective July 26, 1974.)

the Revised Code, in any year in which the county auditor has not advertised the completion of his reappraisal or equalization or notified the owner of agricultural land of a change in the valuation of such land prior to the date on which the owner may file an application requesting the auditor to value the land for real property tax purposes at the current value such land has for agricultural use, and there is an increase in such valuation in that year, the owner may file such application for that tax year at any time prior to the first Monday in March of the following calendar year. When filed, such application shall be considered a properly filed application for such valuation on the basis of agricultural use and, if the auditor determines such land otherwise qualifies for such valuation, the auditor shall determine the value such land has for agricultural use. If the agricultural use valuation is less than the valuation used by the auditor to determine the taxable value of such land for the tax year for which the application is filed, he shall proceed as if the valuation had been reduced by the board of revision pursuant to section 5715.19 of the Revised Code.

shall be that per cent of true value in money, or current agricultural use value in the case of land valued in accordance with section 5713.31 of the Revised Code, the commissioner by rule establishes, but it shall not exceed thirty-five percent. The uniform rules shall also prescribe methods of making the appraisals set forth in section 5713.03 of the Revised Code. The taxable value of each tract, lot, or parcel of real property and improvements thereon, determined in accordance with the uniform rules and methods prescribed thereby, shall be the taxable value of the tract, lot, or parcel for all purposes of sections 5713.01 to 5713.26, 5715.01 to 5715.51, and 5717.01 to 5717.06 of the Revised Code. County auditors shall, under the direction and supervision of the commissioner, be the chief assessing officers of their respective counties, and shall list and value the real property within their respective counties for taxation in accordance with this section and sections 5713.03 and 5713.31 of the Revised Code and with such rules of the commissioner. There shall also be a board in each county, known as the county board of revision, which shall hear complaints and revise assessments of real property for taxation.

The commissioner shall neither adopt nor enforce any rule that requires true value for any tax year to be any value other than the true value in money on the tax lien date of such tax year, or that requires taxable value to be obtained in any way other than by reducing the true value, or in the case of land valued in accordance with section 5713.31 of the Revised Code, its current agricultural use value, by a specified, uniform percentage.

Caution: Sec. 5715.01, as reproduced below, amended by H.B. 66, Laws 2005, is effective June 30, 2005. For provisions effective through June 29, 2005, see above, CCH 1.

Sec. 5715.01. Assessment of real property; rules and procedure; county board of revision.

(A) The tax commissioner shall direct and supervise the assessment for taxation of all real property. The commissioner shall adopt, prescribe, and promulgate rules for the determination of true value and taxable value of real property by uniform rule for such values and for the determination of the current agricultural use value of land devoted exclusively to agricultural use. The uniform rules shall prescribe methods of determining the true value and taxable value of real property and shall also prescribe the method for determining the current agricultural use value of land devoted exclusively to agricultural use, which method shall reflect standard and modern appraisal techniques that take into consideration the productivity of the soil under normal management practices; the average price patterns of the crops and products produced to determine the income potential to be capitalized; the market value of the land for agricultural use; and other pertinent factors. The rules shall provide that in determining the true value of lands or improvements thereon for

tax purposes, all facts and circumstances relating to the value of the property, its availability for the purposes for which it is constructed or being used; its obsolete character, if any; the income capacity of the property; if any; and any other factor that tends to prove its true value shall be used. In determining the true value of minerals or rights to minerals for the purpose of real property taxation, the tax commissioner shall not include in the value of the minerals or rights to minerals the value of any tangible personal property used in the recovery of those minerals.

(B) The taxable value shall be that per cent of true value in money, or current agricultural use value in the case of land valued in accordance with section 5713.31 of the Revised Code, the commissioner by rule establishes, but it shall not exceed thirty-five per cent. The uniform rules shall also prescribe methods of making the appraisals set forth in section 5713.03 of the Revised Code. The taxable value of each tract, lot, or parcel of real property and improvements thereon, determined in accordance with the uniform rules and methods prescribed thereby, shall be the taxable value of the tract, lot, or parcel for all purposes of sections 5713.01 to 5713.26, 5715.01 to 5715.51, and 5717.01 to 5717.06 of the Revised Code. County auditors shall, under the direction and supervision of the commissioner, be the chief assessing officers of their respective counties, and shall list and value the real property within their respective counties for taxation in accordance with this section and sections 5713.03 and 5713.31 of the Revised Code and with such rules of the commissioner. There shall also be a board in each county, known as the county board of revision, which shall hear complaints and revise assessments of real property for taxation.

(C) The commissioner shall neither adopt nor enforce any rule that requires true value for any tax year to be any value other than the true value in money on the tax lien date of such tax year or that requires taxable value to be obtained in any way other than by reducing the true value, or in the case of land valued in accordance with section 5713.31 of the Revised Code, its current agricultural use value, by a specified, uniform percentage.

(As added by S.B. 199, Laws 1969, as amended by S.B. 455, Laws 1972; S.B. 423, Laws 1974; H.B. 920, Laws 1976; H.B. 260, Laws 1983, effective September 27, 1983; H.B. 66, Laws 2005, effective June 30, 2005.)

[133-745]

Sec. 5715.012. Sales assessment ratios; restrictions.—The tax commissioner shall make sales assessment ratio studies of sales and assessments of real property for the purpose of determining the common level of assessment of real property within the counties pursuant to section 5715.19 of the Revised Code and for the purpose of equalization. Such studies shall be based on a representative sampling

CHAPTER 5717—APPEALS

§ 135-100]

Sec. 5717.01. Appeal from county board of revision to board of tax appeals; procedure; hearing.—An appeal from a decision of a county board of revision may be taken to the board of tax appeals within thirty days after notice of the decision of the county board of revision is mailed as provided in division (A) of section 5715.20 of the Revised Code. Such an appeal may be taken by the county auditor, the tax commissioner, or any board, legislative authority, public official, or taxpayer authorized by section 5715.19 of the Revised Code to file complaints against valuations or assessments with the auditor. Such appeal shall be taken by the filing of a notice of appeal, in person or by certified mail, express mail, or authorized delivery service, with the board of tax appeals and with the county board of revision. If notice of appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. Upon receipt of such notice of appeal such county board of revision shall by certified mail notify all persons thereof who were parties to the proceeding before such county board of revision, and shall file proof of such notice with the board of tax appeals. The county board of revision shall thereupon certify to the board of tax appeals a transcript of the record of the proceedings of the county board of revision pertaining to the original complaint, and all evidence offered in connection therewith. Such appeal may be heard by the board of tax appeals at its offices in Columbus or in the county where the property is listed for taxation, or the board of tax appeals may cause its examiners to conduct such hearing and to report to it their findings for affirmation or rejection.

The board of tax appeals may order the appeal to be heard on the record and the evidence certified to it by the county board of revision, or it may order the hearing of additional evidence, and it may make such investigation concerning the appeal as it deems proper.

(As amended by H.B. 920, Laws 1976; S.B. 6, Laws 1981; H.B. 260, Laws 1983; H.B. 612, Laws 2000, (H.B. 675), Laws 2002, effective March 14, 2003.)

§ 135-101]

Sec. 5717.011. Appeals from municipal board of appeal.—(A) As used in this chapter, "tax administrator" has the same meaning as in section 718.01 of the Revised Code.

(B) Appeals from a municipal board of appeal created under section 718.11 of the Revised Code may be taken by the taxpayer or the tax administrator to the board of tax appeals or may be taken by

the taxpayer or the tax administrator to a court of common pleas as otherwise provided by law. If the taxpayer or the tax administrator elects to make an appeal to the board of tax appeals or court of common pleas, the appeal shall be taken by the filing of a notice of appeal with the board of tax appeals or court of common pleas, the municipal board of appeal, and the opposing party. The notice of appeal shall be filed within sixty days after the day the appellant receives notice of the decision issued under section 718.11 of the Revised Code. The notice of appeal may be filed in person or by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code. If the notice of appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. The notice of appeal shall have attached thereto and incorporated therein by reference a true copy of the decision issued under section 718.11 of the Revised Code and shall specify the errors therein complained of, but failure to attach a copy of such notice and incorporate it by reference in the notice of appeal does not invalidate the appeal.

(C) Upon the filing of a notice of appeal with the board of tax appeals, the municipal board of appeal shall certify to the board of tax appeals a transcript of the record of the proceedings before it together with all evidence considered by it in connection therewith. Such appeals may be heard by the board at its office in Columbus or in the county where the appellant resides; or it may cause its examiners to conduct such hearings and to report to it their findings for affirmation or rejection. The board may order the appeal to be heard upon the record and the evidence certified to it by the administrator, but upon the application of any interested party the board shall order the hearing of additional evidence, and the board may make such investigation concerning the appeal as it considers proper.

(D) If an issue being appealed under this section is addressed in a municipal corporation's ordinance or regulation, the tax administrator, upon the request of the board of tax appeals, shall provide a copy of the ordinance or regulation to the board of tax appeals.

(As added by H.B. 95, Laws 2003, effective January 1, 2004.)

§ 135-120]

Sec. 5717.02. Appeals from final determination; procedure; hearing.—Except as otherwise provided by law, appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations,

journal shall be certified by the board by certified mail to all persons who were parties to the appeal before the board, the person in whose name the property is listed or sought to be listed, if the decision determines the valuation or liability of property for taxation and if such person is not a party to the appeal, the taxpayer or other person to whom notice of the tax assessment, valuation, determination, finding, computation, or order, or correction or re-determination thereof, by the tax commissioner was by law required to be given; the director of budget and management, if the revenues affected by such decision would accrue primarily to the state treasury; and the county auditors of the counties to the undivided general tax funds of which the revenues affected by such decision would primarily accrue.

(D) In the case of an appeal from a municipal board of appeal created under section 718.11 of the Revised Code, the order of the board of tax appeals and the date of the entry thereof upon the board's journal shall be certified by the board by certified mail to all persons who were parties to the appeal before the board.

(E) In the case of all other appeals or applications filed with and determined by the board, the board's order and the date when the order was filed by the secretary for journalization shall be certified by the board by certified mail to the person who is a party to such appeal or application, to such persons as the law requires, and to such other persons as the board deems proper.

(F) The orders of the board may affirm, reverse, vacate, modify, or remand the tax assessments, valuations, determinations, findings, computations, or orders complained of in the appeals determined by the board, and the board's decision shall become final and conclusive for the current year unless reversed, vacated, or modified as provided in section 5717.04 of the Revised Code. When an order of the board becomes final the tax commissioner and all officers to whom such decision has been certified shall make the changes in their tax lists or other records which the decision requires.

(G) If the board finds that issues not raised on the appeal are important to a determination of a controversy, the board may remand the cause for an administrative determination and the issuance of a new tax assessment, valuation, determination, finding, computation, or order, unless the parties stipulate to the determination of such other issues without remand. An order remanding the cause is a final order. If the order relates to any issue other than a municipal income tax matter appealed under sections 718.11 and 5717.011 of the Revised Code, the order may be appealed to the court of appeals in Franklin county. If the order relates to a municipal income tax matter appealed under sections 718.11 and 5717.011 of the Revised Code, the order may be appealed to the court of appeals for the county in which the municipal corporation in which the dispute arose is primarily situated.

(As amended by H.B. 920, Laws 1976; H.B. 634, Laws 1977; H.B. 260, Laws 1983; H.B. 95, Laws 2003, effective January 1, 2004.)

§ 135-200
Sec. 5717.04. Appeal from decision of board of tax appeals to supreme court; parties who may appeal certification.—The proceeding to obtain a reversal, vacation, or modification of a decision of the board of tax appeals shall be by appeal to the supreme court or the court of appeals for the county in which the property taxed is situated or in which the taxpayer resides. If the taxpayer is a corporation, then the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the supreme court or to the court of appeals for the county in which the property taxed is situated, or the county of residence of the agent for service of process, tax notices, or demands, or the county in which the corporation has its principal place of business. In all other instances, the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the court of appeals for Franklin County.

Appeals from decisions of the board determining appeals from decisions of county boards of revision may be instituted by any of the persons who were parties to the appeal before the board of tax appeals, by the person in whose name the property involved in the appeal is listed or sought to be listed, if such person was not a party to the appeal before the board of tax appeals, or by the county auditor of the county in which the property involved in the appeal is located.

Appeals from decisions of the board of tax appeals determining appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be instituted by any of the persons who were parties to the appeal or application before the board, by the person in whose name the property is listed or sought to be listed, if the decision appealed from determines the valuation or liability of property for taxation and if any such person was not a party to the appeal or application before the board, by the taxpayer or any other person to whom the decision of the board appealed from was by law required to be certified, by the director of budget and management, if the revenue affected by the decision of the board appealed from would accrue primarily to the state treasury; by the county auditor of the county to the undivided general tax funds of which the revenues affected by the decision of the board appealed from would primarily accrue, or by the tax commissioner.

Appeals from decisions of the board upon all other appeals or applications filed with and determined by the board may be instituted by any of the persons who were parties to such appeal or application before the board, by any persons to whom the decision of the board appealed from was by law required

to be certified, or by any other person to whom the board certified the decision appealed from, as authorized by section 5717.03 of the Revised Code.

Such appeals shall be taken within thirty days after the date of the entry of the decision of the board on the journal of its proceedings, as provided by such section, by the filing by appellant of a notice of appeal with the court to which the appeal is taken and the board. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten days of the date on which the first notice of appeal was filed or within the time otherwise prescribed in this section, whichever is later. A notice of appeal shall set forth the decision of the board appealed from and the errors therein complained of. Proof of the filing of such notice with the board shall be filed with the court to which the appeal is being taken. The court in which notice of appeal is first filed shall have exclusive jurisdiction of the appeal.

In all such appeals the tax commissioner, or all persons to whom the decision of the board appealed from is required by such section to be certified, other than the appellant, shall be made appellees. Unless waived, notice of the appeal shall be served upon all appellees by certified mail. The prosecuting attorney shall represent the county auditor in any such appeal in which the auditor is a party.

The board, upon written demand filed by an appellant, shall within thirty days after the filing of such demand file with the court to which the appeal is being taken a certified transcript of the record of the proceedings of the board pertaining to the decision complained of and the evidence considered by the board in making such decision.

If upon hearing and consideration of such record and evidence the court decides that the decision of the board appealed from is reasonable and lawful it shall affirm the same, but if the court decides that such decision of the board is unreasonable or unlawful, the court shall reverse and vacate the decision or modify it and enter final judgment in accordance with such modification.

The clerk of the court shall certify the judgment of the court to the board, which shall certify such judgment to such public officials or take such other action in connection therewith as is required to give effect to the decision. The "taxpayer" includes any person required to return any property for taxation.

Any party to the appeal shall have the right to appeal from the judgment of the court on questions of law, as in other cases.

(As amended by H.B. 220, Laws 1953; S.B. 174, Laws 1973; H.B. 634, Laws 1977; H.B. 260, Laws 1983; H.B. 231, Laws 1987, effective October 5, 1987.)

§ 135-265

§ 5717.05

Sec. 5717.05. Appeal from decision of county board of revision to court of common pleas; notice; transcript; judgment.—As an alternative

to the appeal provided for in section 5717.01 of the Revised Code, an appeal from the decision of a county board of revision may be taken directly to the court of common pleas of the county by the person in whose name the property is listed or sought to be listed for taxation. The appeal shall be taken by the filing of a notice of appeal with the court and with the board within thirty days after notice of the decision of the board is mailed as provided in section 5715.20 of the Revised Code. The county auditor and all parties to the proceeding before the board, other than the appellant filing the appeal in the court, shall be made appellees, and notice of the appeal shall be served upon them by certified mail unless waived. The prosecuting attorney shall represent the auditor in the appeal.

When the appeal has been perfected by the filing of notice of appeal as required by this section, and an appeal from the same decision of the county board of revision is filed under section 5717.01 of the Revised Code with the board of tax appeals, the forum in which the first notice of appeal is filed shall have exclusive jurisdiction over the appeal.

Within thirty days after notice of appeal to the court has been filed with the county board of revision, the board shall certify to the court a transcript of the record of the proceedings of said board pertaining to the original complaint and all evidence offered in connection with that complaint.

The court may hear the appeal on the record and the evidence thus submitted, or it may hear and consider additional evidence. It shall determine the taxable value of the property whose valuation or assessment for taxation by the county board of revision is complained of, or if the complaint and appeal is against a discriminatory valuation, shall determine a valuation that shall correct the discrimination, and the court shall determine the liability of the property for assessment for taxation, if that question is in issue, and shall certify its judgment to the auditor who shall correct the tax list and duplicate as required by the judgment.

In correcting a discriminatory valuation, the court shall increase or decrease the value of the property whose valuation or assessment by the county board of revision is complained of by a percent or amount that will cause the property to be listed and valued for taxation by an equal and uniform rule.

Any party to the appeal may appeal from the judgment of the court on questions of law as in other cases.

(As amended by S.B. 109, Laws 1957; S.B. 370, Laws 1959; H.B. 337, Laws 1965; H.B. 934, Laws 1988, effective March 17, 1989.)

§ 135-310

Sec. 5717.06. Liability for taxes shall relate back.—In case of the institution of an appeal under sections 5717.01 to 5717.04 of the Revised Code,

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- 600 Exempt property owned by United States of America
- 610 Exempt property owned by state of Ohio
- 620 Exempt property owned by counties
- 630 Exempt property owned by townships
- 640 Exempt property owned by municipalities
- 645 Exempt property owned or acquired by metropolitan housing authorities
- 650 Exempt property owned by board of education
- 660 Exempt property owned by park districts (public)
- 670 Exempt property owned by colleges, academies (private)
- 680 Charitable exemptions—hospitals—homes for aged, etc.
- 685 Churches, etc., public worship
- 690 Graveyards, monuments, and cemeteries
- 700 Community urban redevelopment corporation tax abatements (R.C. 1728.10)
- 710 Community reinvestment area tax abatements (R.C. 3735.61)
- 720 Municipal improvement tax abatements (R.C. 5709.41)
- 730 Municipal urban redevelopment tax abatements (R.C. 725.02)
- 740 Other tax abatements (R.C. 165.01 and 303.52)
- 800 Agricultural land and improvements owned by a public utility other than a railroad
- 810 Mineral land and improvements owned by a public utility other than a railroad
- 820 Industrial land and improvements owned by a public utility other than a railroad
- 830 Commercial land and improvements (including all residential property) owned by a public utility other than a railroad
- 840 Railroad real property used in operations
- 850 Railroad real property not used in operations
- 860 Railroad personal property used in operations
- 870 Railroad personal property not used in operations
- 880 Public Utility personal property other than railroads

(D) The coding system provided in this rule shall be effective for tax year 1985.

(E) Nothing contained in this rule however, shall cause the valuation of any parcel of real property to be other than its true value in money or be construed as an authorization for any parcel of real property in any class in any county to be valued for tax purposes at any other value than its "taxable value" as set out in rule 5705-3-01 of the Administrative Code.

HISTORY: Eff. 12-11-84 (1984-85 OMR 632)
1984-85 OMR 334; 10-20-81, 11-1-77

CROSS REFERENCES

RC 5703.05, Powers, duties, and functions of tax commissioner
RC 5713.041, Each parcel classified annually according to use

NOTES ON DECISIONS AND OPINIONS

12 OS(3d) 7, 12 OBR 6, 465 NE(2d) 421 (1984), *Roosevelt Properties Co v Kinney*, OAC 5705-3-06(B)(5), which excludes certain rental residential property from the definition of "residential property" entitled to an advantageous tax reduction factor, is consistent with RC 5713.041 and O Const Art XII, § 2a, which authorized the promulgation of the rule, with the equal protection clause, and with the "uniform rule" requirement of O Const Art XII, § 2.

BTA 82-A-217 (1983), *Sharon Land Co/Sharon Club Co v Medina County Bd of Revision*. There are but two classifications for real property in Ohio: O Const Art XII, § 2a provides that "[t]he two classes shall be: (a) residential and agricultural land and improvements; (b) all other land and improvements"; in conformity with O Const Art XII, § 2a, RC 5713.041 and OAC 5705-3-06 reiterate that there are but two classifications of real property and that the classes consist of residential and agricultural land and

improvements, and all other land and improvements; therefore a private country club is properly classified as commercial property with the "sub-use as golf course on a county property record card."

BTA 81-F-666 and 81-A-667 (1983), *Roosevelt Properties Co v Kinney*, affirmed by 12 OS(3d) 7, 12 OBR 6, 465 NE(2d) 421 (1984), OAC 5705-3-06 is a reasonable administrative regulation adopting the statutory directions found in RC 5713.041.

5705-3-07 Valuation of land

(A) General—All land shall be appraised at its true value in money as of tax lien date of the year in which the appraisal or update of values is made. In arriving at the true value in money the county auditor shall consider, along with other factors, not only the present use of the land but also its highest and best probable legal use consistent with existing zoning and building regulations. The requirement that land be classified under rule 5705-3-06 of the Administrative Code according to its principal use shall not affect the requirement of this rule that it be appraised at its highest and best probable legal use. The present improvements to the land, the demand and supply of land, the demand and supply of land for such use, financing method, the length of time until developed and the cost of development are factors that should be considered in determining the highest and best probable legal use of the land.

(B) All relevant facts tending to influence the market value of land should be considered, including, but not limited to, size, shape, topography, soil and subsoil, drainage, utility connections, street or road, land pattern, neighborhood type and trend, amenities, zoning, restrictions, easements, hazards, etc.

(C) Land may be valued by four principal methods:

(1) The preferred method is the market data or comparative process requiring the collection and analysis of actual arms-length sales and other market information on comparable sites made within a reasonable time of the date of the appraisal with adjustments for variations. This method should be used except in unusual circumstances.

(2) The allocation method in which the land value is estimated by subtracting the value of the improvements from a known sale price. This is primarily used in an area where there are very few sales of vacant land and the improvements to land are of a generally uniform type.

(3) The land residual method estimates land value by capitalizing the residual income imputable to land as derived from actual or hypothetical new improvements assuming highest and best use. This method is useful in arriving at land value when there are few or no sales or as a check against the market approach.

(4) The development method can be used in valuing land ready for development by estimating value as fully developed and subtracting the development, administrative and entrepreneurial costs.

(D) The county auditor shall deduct from the value of each separate parcel of real property the amount of land occupied and used by a canal or used as a public highway as provided in section 5713.04 of the Revised Code.

(E) Agricultural—Agricultural lands shall be classified and valued according to their characteristics and capabilities for use, based primarily on what they will produce under average conditions and typical management in the locality. Assessors should obtain and use information available relating to soil classification, land capabilities, land use and soil maps, production records, price records and other

information from the Ohio state university, Ohio agricultural research and development center, County A.S.C., soil conservation service, soil and water conservation districts and other sources. All agricultural lands shall first be valued according to their true value. Then if the owner applies to have his land valued according to its current value the land has for agricultural use the land may be valued according to rules 5705-5-01 to 5705-5-07 of the Administrative Code.

(F) Industrial—Additional factors that shall be considered in valuing industrial land are the convenience of location to shipping and labor sources as well as the proximity to related industries. Land not used in manufacturing shall be valued according to its value for use as parking lots, storage, waste or dump area, or other uses both present and probable.

(G) Commercial—In the valuation of commercial sites the location in the trading area, the purchasing power of the entire area, and the relative availability of sites shall be considered in addition to previously mentioned factors.

(H) Residential—Residential sites located in suburban and rural areas shall be valued by using the same factors that are used in valuing urban residential lands with the same facilities and amenities.

(I) Coal, mineral deposits, oil and gas—Coal and minerals shall be valued in the same manner and on the same price level as other real property. Some of the factors that shall be considered in valuing coal and mineral deposits are the quality and extent of the deposit, the active working area which at current production will be mined within five years, active reserves that will not be worked for five to ten years, inactive reserves that will not be worked until after ten years, and mined out or depleted areas.

Separate oil and gas rights shall be valued in accordance with the annual entry of the commissioner of tax equalization in the matter of adopting a uniform formula in regard to the valuation of oil and gas deposits in the eighty-eight counties of the state.

When rights to coal, minerals, oil and gas have not been separated from the fee, the value of the mineral deposits shall be added to the value of the surface.

(J) Pricing units and preparation of land unit price schedules, and depth tables. Land unit prices (price per acre, square foot or front foot) used shall be those appropriate and typically used in the market in pricing similar land. Generally per acre prices shall be used in pricing agricultural lands. Large industrial, commercial or residential tracts may be priced by the use of per acre or square foot prices. Front foot prices shall be used, generally, for the pricing of residential and commercial lots and lands in congested areas. Regardless of the pricing unit used, the result shall be the true value in money of the land.

(K) Each county auditor shall prepare, or have prepared, under his direction and supervision:

(1) Land schedules, setting forth land unit prices to be used in appraising the different classes of land.

(2) Tables, where applicable, showing depth, corner and alley influence factors, etc., to be used in conjunction with the unit prices.

(3) Tax maps that shall accurately indicate the area, acreage or dimensions of each lot, tract, or parcel of land in the county, together with the name of the owner, if possible, and the lot section, or survey number, showing the unit price used in pricing the various types of land.

One set of all land unit price schedules, depth, corner and alley influence tables, and tax maps with unit prices

shall be kept on file in the county auditor's office, open for public inspection during regular office hours.

HISTORY: Eff. 10-20-81
11-1-77; prior BTA-5-07

CROSS REFERENCES

RC 5713.01, County auditor shall be assessor, assessment, procedure, employment and compensation of employees

RC 5715.01, Tax commissioner to direct and supervise assessment of real property, procedures, county board of revision to hear complaints, rules of commissioner

NOTES ON DECISIONS AND OPINIONS

1 OS(3d) 40, 1 OBR 74, 437 NE(2d) 601 (BTA 1982), Beckett Ridge Assn No. 1 v Butler County Bd of Revision. Property designated as green space or common open space in a planned unit development has some taxable value, which may be reduced by zoning easements and other restrictions, and the county auditor must apply uniform standards, taking into consideration all relevant factors specified in RC 5713.03 and OAC 5702-3-07 in valuing the property.

No. 43969 (8th Dist Ct App, Cuyahoga, 4-8-82), Coventry Towers, Inc v Cuyahoga County Bd of Revision. In determining the true market value of an apartment complex for tax purposes, the appraisal may include a vacancy rate based on future trends rather than the actual vacancy rate.

BTA 82-C-685 (12-27-85), Muirfield Assn, Inc v Franklin County Bd of Revision. In valuing common open space property for tax purposes, the board of tax appeals must consider all the factors referred to in RC 5713.03 and OAC 5705-3-07 when common open space is encumbered by zoning, deed restrictions, easements, and other such burdens.

5705-3-08 Valuation of buildings, structures, fixtures and improvements to land

(A) General—The true value of improvements may be determined by either the market data, income or cost approach. Regardless of the approach used the total of the depreciated value of the improvements to land and the "true value" of the land should be the "true value" of the property as a whole, as defined in rule 5705-3-01 of the Administrative Code. While the cost approach will generally be used one of the other approaches should be used as a check on whether the determination of depreciation or obsolescence is correct.

In arriving at the value of the depreciated improvements by the market data approach the value of the entire property is estimated by the use of comparable sales after allowing for variations. The land value determined according to rule 5705-3-07 of the Administrative Code is then subtracted to arrive at the value of the improvements in their present or depreciated condition.

The building residual technique is used to estimate improvement values by the income approach. After land value is arrived at the value of the improvements is estimated by capitalizing the net income remaining after deduction for all expenses including interest on the land value.

In the use of the cost approach to estimate improvement value the replacement cost new is first estimated. From the cost new deductions are made for depreciation including physical deterioration, functional and economic obsolescence to arrive at the value of the improvements in their present condition.