

IN THE SUPREME COURT

STATE OF OHIO

APPEAL FROM THE BOARD OF TAX APPEALS

KNICKERBOCKER PROPERTIES, INC. XLII,	)	SUPREME COURT CASE
	)	NUMBER 07-0896
)	
Appellant,)	
	)	BOARD OF TAX APPEALS
vs.	)	CASE NUMBER 2005-B-730
)	
DELAWARE COUNTY BOARD OF)	
REVISION, DELAWARE COUNTY)	
AUDITOR, OLENTANGY LOCAL SCHOOLS)	
BOARD OF EDUCATION AND TAX)	
COMMISSIONER OF THE STATE OF OHIO,)	
)	
Appellees.)	

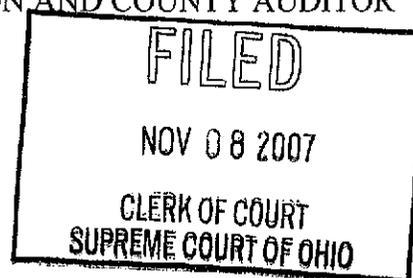
BRIEF OF APPELLANT

Todd W. Sleggs (0040921)
COUNSEL OF RECORD
SLEGGS, DANZINGER & GILL CO., LPA
820 W. Superior Avenue, Ste. 400
Cleveland, Ohio 44113
(216) 771-8990
(216) 771-8991 (FAX)

ATTORNEYS FOR APPELLANT
KNICKERBOCKER PROPERTIES, INC.
XLII

David Yost
COUNSEL OF RECORD
County Prosecutor
140 N. Sandusky Street
Delaware, Ohio 43015-1733
(740) 833-2690
(740) 833-2689 (FAX)

ATTORNEYS FOR APPELLEES
DELAWARE COUNTY BOARD OF
REVISION AND COUNTY AUDITOR



Jeffrey A. Rich (0017495)
COUNSEL OF RECORD
Mark H. Gillis (0066908)
RICH, CRITES & DITTMER, LLC
300 East Broad Street, Suite 300
Columbus, Ohio 43215
(614) 228-5822
(614) 540-7474 (FAX)

ATTORNEY FOR APPELLEE
OLENTANGY LOCAL SCHOOLS
BOARD OF EDUCATION

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

ATTORNEY FOR APPELLEE TAX
COMMISSIONER OF THE STATE OF
OHIO

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STATEMENT OF THE FACTS

This case comes to the Court from a decision and order of the Ohio Board of Tax Appeals under Revised Code Section 5717.04. The Complaint giving rise to the appeal before the Board of Tax Appeals was filed by the Appellee Board of Education of the Olentangy Local Schools (hereinafter Appellee and/or Board of Education). The complaint was based upon a December 29, 2003 transfer of the property. (Supplement to the Briefs [hereinafter Supp]. at page 1.) In their complaint the Appellee listed the owner of the property as Knickerbocker Properties Inc. XLII c/o the Eproperty Tax Department 117, P.O. Box 4900, Scottsdale, AZ 85261. (Supp. at page 1.) This is not the address of the property owner. The address listed in the Board of Education's complaint does not appear in any of the documentation filed in connection with the sale of the property upon which the Board of Education's complaint is based. (See Supp. at pages 3 and 9.) The deed filed with the Delaware County Recorder in connection with the transfer of the property to the Appellant lists the tax mailing address as "c/o Sentinel Real Estate Corp., 1251 Avenue of the Americas, New York, New York 10020." (Supp. at page 3.) A copy of the conveyance fee statement filed in connection with the transfer also confirms this address for the property owner. (Supp. at page 9). Similarly, the address that appears in the County records for the property is the same address listed in the deed and conveyance fee statement. (Supp. at pages 16 and 18.) In issuing notice of the complaint and Board of Revision hearing on the complaint under Revised Code 5715.19 (B) and 5715.12 the Delaware County Auditor, relying on the error contained in the Appellee's complaint, sent the hearing notice to the Appellant at the incorrect address of c/o Eproperty Tax Department 117, P.O. Box 4900, Scottsdale, AZ 85261. (Supp. at page 10.) The Appellant was made aware of the proceeding by

the Seller forwarding the notice to the Appellant. (Supp. at page 11.) However, after a continuance of the hearing was requested by Appellant, listing the proper address for the property owner (Supp. at page 13.), the County Auditor, again relying on the error in the Board of Education's complaint, sent notice of the rescheduled hearing to Knickerbocker Properties Inc. XLII at the incorrect address of "c/o Eproperty Tax Department 117, P.O. Box 4900, Scottsdale, AZ 85261." (Supp. at 14.) The Appellant did not appear at the rescheduled hearing because they did not receive notice of the hearing date and time. The Appellee proceeded at the hearing before the Delaware County Board of Revision unopposed. The Delaware County Board of Revision granted the request in the Board of Education's complaint. The Delaware County Board of Revision sent a copy of their decision increasing the assessment of the property to the Appellant. (Supp. at page 15.)

Although the County properly issued notice of their decision to the Appellant (Supp. at page 15.) this did not cure the jurisdictional error in the Board of Education's complaint. This issue was raised as part of the Appellant's notice of appeal of the Delaware County Board of Revision decision to the Ohio Board of Tax Appeals. See assignment of error attached to Appellant's Notice of Appeal from the decision of the County Board of Revision to the Board of Tax Appeals.

Once the Appellant perfected its appeal to the Board of Tax Appeals the Appellant filed a motion for remand requesting that the Board of Tax Appeals remand the case to the Delaware County Board of Revision with instructions to dismiss the complaint filed by the Appellee Board of Education. The Appellee Board of Education opposed the motion and argued that it only

needed to correctly list the property owner's name not its address. The Board of Tax Appeals agreed and denied the Appellant's motion for remand. Appendix at page 24.

When this matter came on for hearing before the Ohio Board of Tax Appeals the parties agreed to waive the hearing scheduled by the Board and submitted briefs arguing the jurisdictional issue in the case. In its decision and order the Ohio Board of Tax Appeals rejected Appellant's claim and assessed the property based upon the December 29, 2003 sale of the property. Board of Tax Appeals decision and order at page 7.

LAW AND ARGUMENT

The Appellee's failure to list the property owner's address on their complaint form goes to the core of procedural efficiency in this matter since the Delaware County Auditor could not fulfill its statutory obligation to provide notice under Revised Code Section 5715.19 (B) of the filing of the complaint (in order to allow the property owner an opportunity to file a counter-complaint) and timely notice of the scheduled hearings under Revised Code 5715.12 on the Appellee's complaint. The County Auditor never succeeded in giving notice to the Appellant under Revised Code 5715.19 (B) and 5715.12. As a result, the Appellee was unopposed in prosecuting their complaint before the Delaware County Board of Revision.

PROPOSITION OF LAW NO. 1

PROPER NOTICE TO THE CURRENT OWNER OF REAL PROPERTY IS NECESSARY IN ORDER TO INCREASE THE PROPERTY TAX ASSESSMENT

This proposition of law addresses the following assignments of error:

ASSIGNMENT OF ERROR NO. 1

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

ASSIGNMENT OF ERROR NO. 2.

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

ASSIGNMENT OF ERROR NO. 3.

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

Revised Code 5715.19 (B) requires that county auditors give notice of complaints "to each property owner whose property is the subject of the complaint." Revised Code 5715.12 requires that county boards of revision (of which the county auditor is secretary)¹ give "notice to the person in whose name the property affected thereby is listed and affording him an opportunity to be heard." Similar language in Revised Code 5717.03 (B) regarding certification of Board of Tax Appeals decisions and orders was interpreted by the Court to require certification to "the person whom the record shows to be the owner of the property as of the time that the Board of Tax Appeals was required to certify its decision." Columbus City School District Bd. of Edn v. Franklin Cty. Bd. of Revision, 114 Ohio St. 3d, 1224, 1225, 2007-Ohio-4007. At the time the Appellee filed their complaint, at the time the County Auditor gave notice under Revised Code 5715.19 (B), and at the time the County Board of Revision (through the County Auditor) gave

notice of the hearings under Revised Code 5715.12, the record (Supp. at pages 3 and 9) showed the owner of the property and their address as Knickerbocker Properties Inc. XLII, c/o Sentinel Real Estate Corporation, 1251 Avenue of Americas, New York, New York 10020.

The Court and other courts have recognized that for a complaint to be valid, it must include all information that goes to the core of procedural efficiency. Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision (1998), 80 Ohio St.3d 591; See also The Stanjim Co. v. Bd. of Revision (1974), 38 Ohio St.2d 233; and Public Square Tower One v. Cuyahoga Cty. Bd. of Revision (1986), 34 Ohio App. 3d 49. Implicit in these decisions is the requirement that the information be accurate.

The Board of Tax Appeals has cited Revised Code Section 5715.19(c) to support their position that an address for a property owner may not be known and as a result the address of the property owner is not "essential."² That is not the case in this appeal. The deed and conveyance fee statement that served as the basis for the Appellee's complaint before the Board of Revision clearly identified the address of the Appellant. (Supp. at pages 3 and 9.) Inexplicably the Appellee did not use the address in filing out DTE Form 1, the complaint form. (Supp. at page 1.) As a result, the Appellant never had an opportunity to participate in the proceeding before the Delaware County Board of Revision. It was only after the Board of Revision conducted a hearing on the complaint were the Appellee was unopposed that the Appellant got any notice of

¹ Revised Code 5715.09.

² Revised Code 5715.19 (C) provides in part that "[e]ach board of revision shall notify any complainant and also the property owner, if the property owner's address is known, when a complaint is filed by one other than the property owner, by certified mail, not less than ten days prior to the hearing, of the time and place the same will be heard."

the hearing on Appellee's complaint. (Supp. at page 15.) This should not have happened. The Appellee should have used the mailing address for the Appellant contained in the conveyance information that served as the basis for its complaint. This is a reasonable means to comply with the legal requirements of Revised Code Section 5715.19. The Appellant submits that where a complaint is filed based upon a sale of the property the tax mailing address on the deed and DTE Form 100 (the conveyance fee statement) should be used in the complaint and notices required under Revised Code Sections 5715.19 and 5715.12.

The Appellee's failure to list the property owner's address on their complaint form goes to the core of procedural efficiency in this matter. The County Auditor never served notice of the Board of Education complaint and hearing on the Appellant. For these reasons, the Board of Tax Appeals decision and orders which failed to remand the case to the Delaware County Board of Revision with directions to dismiss the Board of Education's complaint and reinstate the County Auditor's value are unreasonable and unlawful.

The Board of Tax Appeals has made similar findings regarding service and notice in other cases. See Board of Education of the Columbus City Schools v. Franklin County Board of Revision, et. al., Board of Tax Appeals Case No. 2005-A-381, decided June 30, 2006, Slip op. at page 4 (retaining jurisdiction where property owner's listed on the complaint never received notice of the complaint or hearing), supreme court appeal dismissed on other grounds, 114 Ohio St.3d. 1224, 2001-Ohio-4007; See also Rose Hill Securities and Rose Hill Burial Park Association v. Summit County Board of Revision, et. al., Board of Tax Appeals Case Nos. 2004-M-1163,1164 and 1165, Order (Retaining Jurisdiction and Consolidating Appeals), dated October 28, 2005, Slip. op. (allowing correction of incorrect property owner name in an appeal

by substitution of the real party in interest). More recently the Board of Tax Appeals has begun to remand cases to cure defects in service and notice under Revised Code 5715.12. See Cabot II – OHIM06 LLC v. Franklin County Board of Revision, et al. decided June 15, 2007, Board of Tax Appeals Case No. 2006-B-177, Slip. op. at page 9. (hereinafter Cabot) (Board of Revision decision reversed and remanded with directions to provide property owners with “the notice and a hearing in accordance with the provisions of the applicable law.”) and Galion Partners, LLC v. Marion County Board of Revision, et al. decided April 27, 2007, Board of Tax Appeals Case No. 2006-H-2170, Slip. op. at page 3 (hereinafter Galion) (Board of Revision determination vacated where property owner was not properly notified of the Board of Revision hearing). The Board of Tax Appeals order failing to remand this appeal for the same defect was unreasonable and unlawful.

PROPOSITION OF LAW NO. 2

PROPERLY IDENTIFYING THE ADDRESS OF THE PROPERTY OWNER AT THE TIME A REAL PROPERTY TAX ASSESSMENT COMPLAINT IS FILED RUNS TO THE CORE OF PROCEDURAL EFFICIENCY AND IS THEREFORE A JURISDICTIONAL REQUIREMENT.

The proposition of law addresses the following assignments of error:

ASSIGNMENT OF ERROR NO. 4.

The Board of Tax Appeals Decision and Order denying the Appellant’s Motion for Remand is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 5.

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

ASSIGNMENT OF ERROR NO. 6.

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

ASSIGNMENT OF ERROR NO. 7.

The decision of the Board of Tax Appeals violates the right of "equal protection" under Article I, Section 2, and Article II, Section 26, Ohio Constitution and Amendment XIV, Section I United States Constitution in that it treats the Appellant different from other property owners for purposes of taxation.

The problems regarding notice in this appeal began when the Appellee failed to list the owner's address on their complaint and the Delaware County Auditor and Delaware County Board of Revision relied on that incorrect information. The County Appellees did not fulfill their statutory obligations under Revised Code 5715.19 (B) and 5715.12 of giving notice and a opportunity to be heard to the Appellant. These procedural defects run to the core of procedural efficiency and render the Appellee's complaint jurisdictionally defective. The Board of Tax Appeals decision and orders reaching a different conclusion in this appeal are unreasonable and unlawful.

A. ENSURING PROPER SERVICE IS THE RESPONSIBILITY OF A COMPLAINANT.

A Complainant, whether it be a plaintiff in the civil context (see Civil Rule 4.6 (E)) or a party to a tax complaint under Revised Code 5715.19, is ultimately responsible for insuring that a court, or in this case the County Auditor and Board of Revision, properly follow the law and issue the appropriate notices to the parties. This appeal involves an action initiated by the Appellee, not the County Auditor or Board of Revision. The Appellant submits that it is incumbent upon litigants to point out when a court or administrative board is wrong or commits an error. In this case the Appellee should have properly filled out their complaint form and made

sure that the County Auditor and Board of Revision give proper notice to the Appellant before proceeding on its complaint.

It was the Appellee's error that led to the errors in notice and service by the County Auditor and Board of Revision in this case. The Appellee as the originator of this action is responsible to make sure that service of notice of their complaint is properly perfected. Even after receiving Appellant's correspondence (Supp. at page 13.) however, the County Auditor and Board of Revision continued to rely on the erroneous pleading of the Appellee in issuing notices. (Supp. at page 14.) It was not until after the Board of Revision hearing and the Board of Revision issued its decision that proper notice was given to the Appellant in this case. (Supp. at page 15.) By that time the Appellant had lost their opportunity to participate in the proceeding before the Delaware County Board of Revision, the Appellee proceeded unopposed at the hearing, and the Appellant was forced to file an appeal to the Ohio Board of Tax Appeals where the burden of proof had been shifted to them. When the Board of Education bore the burden of proof before the Delaware County Board of Revision the defect in their complaint gave them no opposition. Given the lack of notice to Appellant it is not surprising that the Appellee met their burden of proof before the Delaware County Board of Revision, they had no opposition! This forced the Appellant to appeal the decision and bear the burden of proof on appeal. The Appellee does not deserve such a windfall.

The Board of Tax Appeals' failure to recognize the importance of notice and an opportunity to participate in the proceeding before the County Board of Revision is troubling since notice and an opportunity to be heard are one of the fundamental tenets of due process under the United States and Ohio Constitutions. Having the right of appeal after the burden of

proof has been shifted to the Appellant is not an adequate remedy. See Board of Tax Appeals decision and order at page 4.³ The defects in the Board of Education's complaint and their failure to ensure that Appellant received the proper notices left them with no opposition before the Board of Revision. The Appellant never received proper notice of the filing of the Board of Education's Complaint, notice of the Board of Revision hearing, and was never given an opportunity to participate at the proceeding before the Delaware County Board of Revision. The Appellee's failure to list the property owner's address on their complaint form goes to the core of procedural efficiency in this matter. The County Auditor never served notice of the Board of Education complaint and hearing on the Appellant. For these reasons, the Board of Tax Appeals should have remanded the case to the Delaware County Board of Revision with instructions to dismiss the Board of Education's complaint and reinstate the County Auditor's value, its failure to do so was unreasonable and unlawful.

The fact in this appeal is that there is no evidence that service of notice of the Appellee's complaint and notice of the Board of Revision hearing was ever made on the Appellant. It was only when service was perfected on the Seller of the property, and after the Board of Revision hearing that the Appellant was made aware of this proceeding. (Supp. at pages 11 and 15.)

³ The Board of Tax Appeals decision and order in this appeal is dated April 13, 2007 and yet the Board of Tax Appeals reversed and remanded the Cabot, supra and Galion, supra cases decided April 27, 2007 and June 15, 2007 respectively, while leaving the Appellant without a similar remedy in this appeal. This is the basis for the Appellant's equal protection claim. Galion, supra and Cabot, supra did not involve jurisdictional defects in the complaint filed to commence the proceeding as is the case in this appeal which is why mere remand (without dismissal of the underlying complaint) is not a sufficient remedy in this appeal.

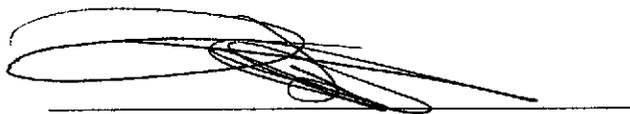
The Appellant owned the property at the time that the Appellee filed their complaint on March 30, 2004 and it was incumbent upon the Appellee as the originator of this action to make sure that service was obtained on the property owner at the address contained in the conveyance fee form and deed that served as the basis for their complaint. The Appellant submits that when attorneys, as was the case in this appeal, file complaints on behalf of taxing entities under Revised Code 5715.19, Civil Rule 4.6(E) should serve as a guide in assigning responsibility for proper service in these proceedings. The Board of Education or their attorney, should be responsible for service just as "the attorney of record or the serving party" are under Civil Rule 4.6(E). The burden is always on the complainant to prove proper service. There is no evidence of proper service in this case.

CONCLUSION

For the foregoing reasons the Appellant, Knickerbocker Properties, Inc. XLII, respectfully requests that this Court reverse the decision and order of the Ohio Board of Tax Appeals and issue an order remanding the appeal to the Board of Tax Appeals with directions to the Board to remand the case to the Delaware County Board of Revision with instructions to dismiss the complaint filed by the Olentangy Local Schools Board of Education and reinstate the County Auditor's value for the property.

Respectfully submitted,

SLEGGs, DANZINGER & GILL CO., LPA

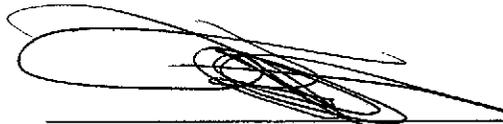


Todd W. Sleggs, Esq. (0040921)
COUNSEL OF RECORD
820 W. Superior Avenue, Suite 400
Cleveland, OH 44113
(216) 771-8990

ATTORNEY FOR APPELLANT
KNICKERBOCKER PROPERTIES, INC., XLII

CERTIFICATE OF SERVICE

A copy of the foregoing Brief of Appellant Knickerbocker Properties, Inc., XLII was mailed via regular U.S. mail postage prepaid, the 7th day of November, 2007 to the following: Jeffrey A. Rich and Mark H. Gillis, Rich, Crites & Dittmer, LLC, 300 East Broad Street, Suite 300, Columbus, Ohio 43215, Attorney for the Appellee Olentangy Local Schools Board of Education; David Yost, County Prosecutor, 140 N. Sandusky Street, Delaware, Ohio 43015-1733, 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, Attorney for the Appellee Tax Commissioner of the State of Ohio.



Todd W. Sleggs, Esq. (0040921)

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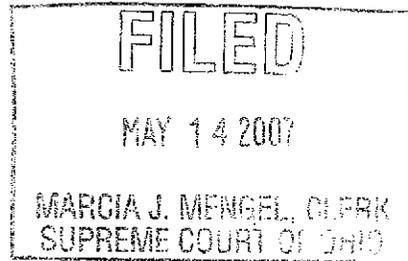
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NOTICE OF APPEAL

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

ATTORNEY FOR APPELLEES
DELAWARE COUNTY BOARD OF
REVISION AND COUNTY
AUDITOR

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

ATTORNEY FOR APPELLANT
KNICKERBOCKER PROPERTIES, INC. XLII

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

ATTORNEY FOR APPELLEE
TAX COMMISSIONER OF THE
STATE OF OHIO

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

ATTORNEY FOR APPELLEE
OLENTANGY LOCAL SCHOOLS
DISTRICT BOARD OF EDUCATION

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and)	<u>NOTICE OF APPEAL TO THE</u>
)	<u>SUPREME COURT OF OHIO</u>
)	<u>PURSUANT TO SECTION</u>
OLENTANGY LOCAL SCHOOLS)	<u>5717.04 REVISED CODE</u>
DISTRICT BOARD OF EDUCATION,)	
)	
Appellee.)	

The Appellant, Knickerbocker Properties, Inc. XLII, 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 13th day of April 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,

SLEGGs, DANZINGER & GILL, CO., LPA



Todd W. Sleggs, Esq. (0040921)

COUNSEL OF RECORD

820 W. Superior Avenue - Suite 400

Cleveland, OH 44113

(216) 771-8990

(216) 771-8992 - FAX

ATTORNEYS FOR APPELLANT

KNICKERBOCKER PROPERTIES, INC. XLII

12-084-02

OHIO BOARD OF TAX APPEALS

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Delaware County Auditor and)	
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Appellees.)	

APPEARANCES:

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

Entered APR 13 2007

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

This cause and matter come on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant from a decision of the Delaware County Board of Revision ("BOR"). In said decision, the BOR determined the taxable value of the subject property for tax year 2003.

Exhibit "A"
CONFIDENTIAL

J. [Signature]

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

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

AUDITOR

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

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

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

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

BOR

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

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

(Conf)

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

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

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

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

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

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

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

Thereafter, this board determined the matter as follows:

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

“Appellant’s motion to remand is denied.”

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

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

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

Turning to the merits of the instant matter, since the hearing before this board was waived, it is necessary to review the record established before the board of revision to assist in our determination of value for the subject property. See *Black v. Bd. of Revision* (1985), 16 Ohio St.3d 11; *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13.

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

When determining value, it has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129; *State ex re. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. See, also, *Reynoldsburg Bd. of Edn. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 543; *Dublin-Sawmill Properties v. Franklin Cty. Bd. of Revision* (1993), 67 Ohio St.3d 575. "An arm's-length sale is characterized by these elements: it is voluntary, i.e., without compulsion or duress,

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

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

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

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

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

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

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

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

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

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

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

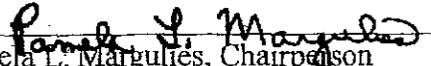

Pamela L. Margulies, Chairperson

EXHIBIT "B"

ASSIGNMENT OF ERRORS

ASSIGNMENT OF ERROR NO. 1

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

ASSIGNMENT OF ERROR NO. 2

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

ASSIGNMENT OF ERROR NO. 3

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

ASSIGNMENT OF ERROR NO. 4

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

ASSIGNMENT OF ERROR NO. 5

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

ASSIGNMENT OF ERROR NO. 6

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

ASSIGNMENT OF ERROR NO. 7

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

CERTIFICATE OF SERVICE

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



Todd W. Sleggs, Esq. (0040921)

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RECEIVED APR 16 2007

12004-02

OHIO BOARD OF TAX APPEALS

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

APPEARANCES:

For the Appellant	- Todd W. Sleggs & Associates Todd W. Sleggs 820 West Superior Avenue Suite 410 Cleveland, Ohio 44113
-------------------	---

For the County Appellees	- David Yost Delaware Co. Prosecuting Attorney 140 North Sandusky Street Delaware, Ohio 43015
-----------------------------	--

For the Appellee Board of Education	- Rich, Crites & Dittmer, LLC Jeffrey A. Rich Mark H. Gillis 300 East Broad Street Suite 300 Columbus, Ohio 43215
--	--

Entered APR 13 2007

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

This cause and matter come on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant from a decision of the Delaware County Board of Revision ("BOR"). In said decision, the BOR determined the taxable value of the subject property for tax year 2003.

Dunlap

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

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

AUDITOR

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

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

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

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

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Land	\$1,174,000	\$410,900
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Total	\$1,174,000	\$410,900

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	True Value	Taxable Value
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Bldg	24,763,500	8,667,230
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On July 12, 2005, appellant timely filed its notice of appeal with this board. In claiming a return to the values originally determined by the auditor for the subject property, appellant lists a specification of error on its notice of appeal which reads as follows:

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

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

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

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

Thereafter, this board determined the matter as follows:

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

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

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

Turning to the merits of the instant matter, since the hearing before this board was waived, it is necessary to review the record established before the board of revision to assist in our determination of value for the subject property. See *Black v. Bd. of Revision* (1985), 16 Ohio St.3d 11; *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13.

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

When determining value, it has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129; *State ex re. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. See, also, *Reynoldsburg Bd. of Edn. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 543; *Dublin-Sawmill Properties v. Franklin Cty. Bd. of Revision* (1993), 67 Ohio St.3d 575. "An arm's-length sale is characterized by these elements: it is voluntary, i.e., without compulsion or duress,

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

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

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

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

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

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

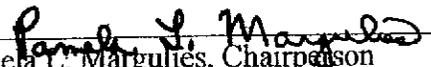
	True Value	Taxable Value
Land	\$1,174,000	\$410,900
Bldg	0	0
Total	\$1,174,000	\$410,900

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

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

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

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


Pamela L. Margulies, Chairperson

OHIO BOARD OF TAX APPEALS

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

APPEARANCES:

- For the Appellants - Todd W. Sleggs & Associates
Todd W. Sleggs
820 W. Superior Avenue
Suite 410
Cleveland, Ohio 44113

- For the County Appellees - David Yost
Delaware Co. Prosecuting Attorney
140 N. Sandusky Street
Delaware, Ohio 43015

- For the Appellee Board of Education - Rich, Crites & Wesp, LLC
Jeffrey A. Rich
Kelley A. Gorry
Mark H. Gillis
300 East Broad Street
Suite 300
Columbus, Ohio 43215

Entered JUL - 7 2006

This matter is now considered upon a motion for remand filed by counsel for Knickerbocker Properties Inc. XLII, appellant herein. Appellant moves for an order remanding this appeal to the Delaware County Board of Revision ("BOR")

with instructions to dismiss the complaint filed by the Olentangy Local Schools Board of Education (“BOE”).

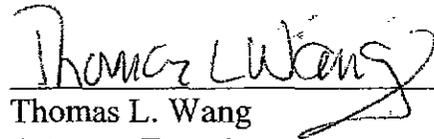
Appellant contends, in its memorandum, that the BOE used the wrong mailing address for the taxpayer-owner of the subject property on its complaint and that for a complaint to be valid it must include the correct address as this information goes to the core of procedural efficiency since the Delaware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

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

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

Appellant’s motion to remand is denied.

On behalf of the Board of Tax Appeals,
pursuant to Ohio Adm. Code 5717-1-10



Thomas L. Wang
Attorney Examiner

TLW/jsl



TODD A. HANKS
DELAWARE COUNTY AUDITOR

6/13/2005

Knickerbocker Properties Inc. XLII
c/o Sentinel Real Estate Co
1251 Avenue of the Americas
New York NY 10020

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:
04-916	318-433-01-014-001	1,174,000
	318-434-01-013-001	26,431,000

cc: Board of Education of the Olentangy LSD
c/o Jeffrey Rich, Esq.
300 East Broad Street, Ste 300
Columbus Ohio 43215

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

OHIO BOARD OF TAX APPEALS

Board of Education of the Columbus)
City Schools,)
)
Appellant,)
)
vs.)
)
Franklin County Board of Revision,)
Franklin County Auditor, and 2100 Maple)
Canyon Plaza LLC,)
)
Appellees.)

CASE NO. 2005-A-381
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Appellant - Rich, Crites & Dittmer, LLC
Mark H. Gillis
300 East Broad Street, Suite 300
Columbus, Ohio 43215

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

For the Appellee Property Owner - Sleggs, Danzinger & Gill Co., LPA
Todd W. Sleggs
820 West Superior Avenue, Suite 400
Cleveland, Ohio 44113

Entered June 30, 2006

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant from a decision of the Franklin County Board of Revision. In said decision, the board of revision determined the taxable value of the subject property for tax year 2003.

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

The subject real property, a freestanding drugstore, is located in the city of Columbus on approximately 1.368 acres, in the Columbus City School District taxing district, Franklin County, Ohio. The value of the parcel, #010-147408, as determined by the auditor and by the board of revision, is as follows:

AUDITOR		
	TRUE VALUE	TAXABLE VALUE
Land	\$ 354,000	\$ 123,900
Bldg	1,406,000	492,100
Total	\$ 1,760,000	\$ 616,000

BOARD OF REVISION		
	TRUE VALUE	TAXABLE VALUE
Land	\$ 354,000	\$ 123,900
Bldg	646,000	226,100
Total	\$ 1,000,000	\$ 350,000

Appellant contends that the board of revision has undervalued the parcel in question by not relying upon the sale of the subject as an indicator of its value. Appellee property owner 2100 Maple Canyon Plaza LLC ("Maple Canyon") purchased the parcel in question on July 1, 2003, for \$2,900,000.

At the outset, before considering the merits of this matter, we must address a jurisdictional issue raised by Maple Canyon. Specifically, Maple Canyon contends that the appellant BOE listed the address of the property owner incorrectly on the increase complaint it filed with the board of revision and that consequently, this matter must be remanded to the BOR for purposes of dismissing the original complaint. Specifically, the BOE listed a Rhode Island address for the property owner which Maple Canyon claims was incorrect. The BOE attached documentation to its brief to support its position that at the time of filing its complaint, it, in fact, used the address as contained in the records of the Franklin County Treasurer. However, attachments to a brief do not rise to the level of evidence upon which this board may rely, and therefore, such documents will not be considered. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13; *Executive Express, Inc. v. Tracy* (Nov. 5, 1993), BTA No. 1992-P-880, unreported; *Westerville City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Feb. 23, 1996), BTA No. 1995-T-278, unreported; *ARV Assisted Living, Inc. v. Hamilton Cty. Bd. of Revision* (Interim Order, July 30, 1999), BTA No. 1998-N-168, unreported; *Bd. of Edn. of the Hilliard City School Dist. v. Franklin Cty. Bd. of Revision* (July 15, 2005), BTA No. 2003-R-1430, unreported.

Although we cannot consider the information provided by the BOE outside the hearing, there is nothing in the record to establish what the correct address for the property owner was at the time the complaint was filed. Regardless, we do not find that the listing of the property owner's address on a complaint filed with a BOR

runs to the core of procedural efficiency. See *Akron Standard Div. v. Lindley* (1984), 11 Ohio St.3d 10; *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision* (1998), 80 Ohio St.3d 591. In the instant matter, it appears, for purposes of providing notice to a property owner of a pending complaint or of an upcoming BOR hearing, that the BOR does not necessarily utilize the property owner address listed on the complaint. S.T. at Ex. 2-6. Arguably, then, the address listed on the complaint is not “essential,” as the BOR is not required to use it, and in this instance, did not utilize it. Further, statutory language acknowledges that the property owner’s address may not be known, e.g., in R.C. 5715.19(C) wherein it states that “[e]ach board of revision shall notify any complainant and also the property owner, *if the property owner’s address is known*, when a complaint is filed ***.”(Emphasis added.) Finally, the property owner obviously received notice of the filing of the BOE’s complaint and the BOR proceedings, as it was represented at the BOR hearing by counsel and offered the testimony of its appraiser. Accordingly, we find that the BOE’s complaint properly established jurisdiction with the BOR.

Turning to the merits of the instant matter, since the hearing before this board was waived, it is necessary to review the record established before the board of revision to assist in our determination of value for the subject property. See *Black v. Bd. of Revision* (1985), 16 Ohio St.3d 11; *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13. A review of the statutory transcript indicates this appeal originated at the board of revision with the Board of Education of the Columbus City Schools (“BOE”) filing an original complaint against the valuation of the subject

property with the Franklin County Board of Revision, seeking to increase the subject's value to reflect its recent sale price. No counter-complaint was filed, although the appellee property owner was represented by counsel and offered the appraisal report and testimony of Robin M. Lorms, MAI, CRE, a state-certified general real estate appraiser, at the hearing before the board of revision. The board of revision decreased the valuation of the subject property to \$1,000,000, reflecting the value opined by the property owner's appraiser.

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

When determining value, it has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. See, also, *Reynoldsburg Bd. of Edn. v. Licking Cty. Bd. of Revision*

(1997), 78 Ohio St.3d 543; *Dublin-Sawmill Properties v. Franklin Cty. Bd. of Revision* (1993), 67 Ohio St.3d 575. "An arm's-length sale is characterized by these elements: it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox County Bd. of Revision* (1988), 47 Ohio St.3d 23.

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

Initially, we have reviewed the evidence of sale of the subject, specifically, the deed and conveyance fee statement, which indicate a sale price of \$2,900,000 in July 2003, as well as a lease abstract. S.T. at Ex. 12. It is the property owner's contention that the recent sale price does not reflect the subject's true value because the sale reflects the value of the leased fee. However, there has been no

representation from the property owner that the sale was anything but arm's length, and there is certainly nothing in the record from which that could be inferred.

Thus, based upon the foregoing, this board finds that the subject sale had all the indicia of, and consequently was, an arm's-length sale. However, regardless of the arm's-length nature of the transaction, the property owner would have us disregard the sale price as not reflective of market value, claiming that "[s]ales of properties subject to build-to-suit leases [d]o not reflect the obsolescence of the real estate created by the tenant's design requirements.'" Property Owner's Brief at 4.

As we consider the property owner's position, we are mindful that in *Ratner v. Stark Cty. Bd. of Revision* (1986), 23 Ohio St.3d 59, the syllabus provides, "although the sale price is the 'best evidence' of true value of real property for tax purposes, it is not the only evidence. A review of independent appraisals based upon factors other than the sale price is appropriate where it is shown that the sale price does not reflect true value." The Supreme Court then identified factors that it believed affected the reliability of the sale price as an indicator of value:

"This court has never adopted an absolutist interpretation of this statute. Our decisions and those of other jurisdictions with similar statutes have approved of considering factors that affect the use of the sale price of property as evidence of its true value. Such factors might include: mode of payment, sale-lease arrangements, abnormal economic conditions and the like." *Id.* at 61.

However, the Supreme Court recently decided *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, and therein overruled *Ratner*, supra. Specifically, the court overruled *Ratner* and its

successor case, *Ratner v. Stark Cty. Bd. of Revision* (1988), 35 Ohio St.3d 26, “to the extent that they [*Ratner I* and *Ratner II*] direct the board of revision and the BTA to ‘consider and review evidence presented by independent real estate appraisers that adjusts the contract sale price to reflect both the price paid for real estate and the price paid for favorable financing[.]’” *Berea*, supra, at ¶ 13. The court went on to “hold that when the property has been the subject of a recent arm’s-length sale between a willing seller and a willing buyer, the sale price of the property shall be ‘the true value for taxation purposes.’ R.C. 5713.03.” *Berea* at 5.

Thus, based upon the court’s pronouncement, we find that the price paid by the appellee property owner for the subject property on July 1, 2003, is the true value of the property for tax year 2003. The property owner has not met its burden of proving that the sale was not arm’s length, and, as such, the value¹ of the subject for tax year 2003 is that which the board of education sought, based upon the sale of the subject, specifically:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 580,000	\$ 203,000
Bldg	2,320,000	812,000
Total	\$ 2,900,000	\$ 1,015,000

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

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¹ The subject land and building values have been assigned in the same proportion as that which the auditor utilized in the subject’s initial valuation.

OHIO BOARD OF TAX APPEALS

Cabot II-OH1MO6 LLC,)
)
 Appellant,)
)
 vs.)
)
 DECISION AND ORDER
)
)
 Franklin County Board of Revision,)
 Franklin County Auditor, and)
 Hilliard city School District,)
)
 Appellees.)

APPEARANCES:

- For the Appellant - Taft, Stettinius, & Hollister LLP
Stephen M. Griffith, Jr.
1800 U.S. Bank Tower
425 Walnut Street
Cincinnati, Ohio 45202-3957

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

- For the Board of Education - Rich, Crites, & Dittmer, LLC
Jeffrey A. Rich
Mark H. Gillis
300 East Broad Street, Suite 300
Columbus, Ohio 43215

Entered June 15, 2007

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

On April 20, 2007, the Board of Tax Appeals ("BTA") issued an order requiring the appellant to show cause why this board should not affirm Franklin County Board of Revision's ("BOR") decision to dismiss appeal.

original complaint for failure to prosecute. On May 4, 2007, the appellant filed its response.

The record reflects that on March 30, 2006, Franklin E. Eck, Jr., attorney for Trenberth, LLC, filed a complaint with the BOR for his client. Trenberth, LLC was the owner of the subject on that date. A counter-complaint was filed on March 25, 2006 by counsel for the Board of Education of the Hilliard City Schools ("BOE").

By certified letters dated July 27, 2006, the BOR informed Trenberth, LLC and the BOE that an evidentiary hearing was scheduled before it on August 23, 2006.

Evidently, the BOR was subsequently notified that Oak Hill Banks was the new owner and a new hearing date of February 12, 2007 was sent to Oak Hill Banks, Trenberth, LLC and the BOE by certified letters dated January 30, 2007. The scheduled time of this hearing was 10:30 a.m.

On February 12, 2007, the BOR conducted its evidentiary hearing on the matter. The BOE was represented by counsel at this hearing. There was no appearance on behalf of the either Oak Hill Banks or Trenberth, LLC.

By certified letters dated February 23, 2007, the BOR notified Oak Hill Banks, Trenberth, LLC and the BOE that the original complaint was dismissed for lack of prosecution. These letters appear to have been mailed on February 26, 2007.

On March 6, 2007,¹ counsel for Cabot II-OH1W06, LLC, (“Cabot”) a Delaware limited liability company, sent a letter to the BOR stating that Cabot owned the subject property and requested permission to “intervene in the pending Board of Revision hearing.” S.T. We construe this request to be a motion to intervene. Counsel was informed that the decision had already been issued.²

On March 20, 2007, Cabot filed its appeal with the BTA contesting the BOR’s dismissal of the matter.³

In its response to the board’s show cause order, appellant tendered a certified copy of a real property conveyance fee statement and argued that once it acquired title to the subject property, it had the right to intervene in the complaint before the BOR.

The conveyance fee statement indicated that Oak Hill Banks transferred fee simple title to the appellant for a consideration of \$3,150,000 on February 12, 2007, at 12:07 p.m.

In *LCL Income Properties v. Hamilton Cty. Bd. of Revision* (1995), 71 Ohio St.3d 652, the Supreme Court of Ohio held that the failure of a property owner to appear at a board of revision hearing is proper grounds for the dismissal

¹ Received by the BOR on March 7, 2007.

² It appears from the statutory transcript that this occurred in a telephone call to Cabot’s counsel from an unidentified BOR employee.

³ Relying upon the Supreme Court’s decisions in *State ex rel. Borsuk v. Cleveland* (1972), 28 Ohio St.2d 224, paragraph one of the syllabus, and *Hal Artz Lincoln-Mercury, Inc. v. Ford Motor Co.* (1986), 28 Ohio St.3d 20, this board has repeatedly held that a county board of revision retains jurisdiction over a complaint until an appeal is filed from that tribunal’s decision or until the period within which an appeal may be taken from such decision has run. See, e.g., *Bd. of Edn. of the Reynoldsburg City Schools v. Licking Cty. Bd. of Revision* (Mar. 18, 1994), BTA No. 1993-A-1352, unreported; *Charles Alter, as Trustee under Joseph Lefkowitz Revocable Trust dated Sept. 20, 1992 (39.54%), et al. v. Franklin Cty. Bd. of Revision* (Sept. 17, 1999), BTA No. 1998-K-1336, et seq., unreported. Until Cabot filed its notice of appeal with this board on March 20, 2007, the BOR had until March 28, 2007 to respond to the motion to intervene.

of the owner's complaint. *LCL* was an affirmation of the court's earlier ruling in *Swetland v. Evatt* (1941), 139 Ohio St. 6, in which it held at paragraph nine of the syllabus:

"A county board of revision *** is a quasi-judicial body, and where a taxpayer files a complaint against the assessed value of his real property and thereafter fails to attend a hearing of which he has had notice and no evidence in support of such complaint is offered by or on behalf of the taxpayer, a county board of revision is justified in fixing the valuation complained of in the amount assessed by the county auditor."

However, in its response brief, appellant contends that *LCL* and *Swetland* do not apply because "[i]n each case, the complainant failed to attend a hearing of which the complainant had notice. In this case, the owner of the [p]roperty at the time of the BOR hearing had no notice of that hearing." *Id.* at 2. Appellant further argues that it had the right to intervene in the complaint before the BOR and directs our attention to *Bd. of Edn. of the Orange City School Dist. v. Cuyahoga Cty. Bd. of Revision* (Oct. 15, 1994), BTA Nos. 2004-V-71, et seq., unreported.

The legislature specifically requires notice of BOR hearings be given to a taxpayer by certified mail. R.C. 5715.19(C) provides in pertinent part as follows:

"Each board of revision *shall notify* any complainant and also the property owner, if his address is known, when a complaint is filed by one other than the property owner, *by certified mail, not less than ten days prior to the hearing of the time and place the same will be heard.*" (Emphasis added).

Accordingly, it is improper for a county board of revision to dismiss a complaint for failure to prosecute unless it can demonstrate first that notice of its hearing was sent to and received by the complainant in compliance with the requirements of R.C. 5715.19(C). See *Gnandt v. Cuyahoga Cty. Bd. of Revision* (May 14, 1998), Cuyahoga App. Nos. 72488 and 72489, unreported (reversing this board's affirmance of a board of revision's dismissal of a complaint for failure to prosecute where the board of revision was unable to affirmatively demonstrate its compliance with the express requirements of R.C. 5715.19(C)); *Quinn v. Franklin Cty. Bd. of Revision* (May 7, 1999), BTA No. 1998-L-210, unreported; *Bd. of Edn. of the Delaware City Schools v. Delaware Cty. Bd. of Revision* (Feb. 5, 1999), BTA No. 1997-L-871, unreported. *Brunswick Limited Partnership v. Medina Cty. Bd. of Revision* (January 19, 2007), BTA No. 2006-H-1020, unreported.

But, in the case before us, the record reflects that the BOR issued certified mail notice to the complainant and the property owner of record pursuant to R.C. 5715.19(C). The BOR gave notice to *known* property owners within the required period prior to hearing.

As we have noted in the past, the Civil Rules are not binding in adjudicatory proceedings before administrative agencies. *Bd. of Edn., Princeton City School Dist. v. Tracy* (May 15, 1998), BTA No. 1997-K-830, interim order, footnote 2, unreported; *The Cleveland Clinic Foundation v. Lawrence* (May 5, 2000), BTA No. 1999-A-1006, unreported. Such rules are not expressly

applicable to the proceedings before the BOR. *CP Investments Ltd. v. Cuyahoga Cty. Bd. of Revision* (Sept. 19, 1997), BTA No. 1997-T-297, unreported.

However, we find the civil rule on intervention to be helpful to our analysis of the situation before us today. Civil Rule 24(A) states as follows:

“(A) Intervention of right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of this state confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.

(B) Permissive intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of this state confers a conditional right to intervene; or (2) when an applicant’s claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.”

This issue of whether a Civil Rule 24 motion is timely was discussed by the court in *City of Norton v. Sanders* (1989), 62 Ohio App.3d 39. Therein, the court stated as follows:

“Whether an application to intervene under Civ. R. 24 is timely depends on the facts and circumstances of the particular case, and is to be determined by the trial

court in its discretion. *NAACP v. New York* (1973), 413 U.S. 345, 366, 93 S.Ct. 2591, 2603, 37 L.Ed. 2d 648, 663. The courts have indicated a strong reluctance to grant intervention after a trial judgment is entered, making such intervention unusual and not often granted. However, the courts are making an exception to the rule where the intervenors are protecting their right to appeal from an adverse judgment. "The critical inquiry in every such case is whether in view of all the circumstances the intervenor acted promptly after the entry of final judgment." *United Airlines, Inc. v. McDonald* (1977), 432 U.S. 385, 395-396, 97 S.Ct. 2464, 2470-2471, 53 L.Ed. 423, 432-433. In determining whether to permit a post-judgment intervention, the courts have considered the following: the purpose for which intervention was sought; the necessity for intervention as a means of preserving the applicant's rights; and the probability of prejudice to those parties already in the case. Annotation, *Timeliness of Application for Intervention As of Right Under Rule 24(a) of Federal Rules of Civil Procedure* (1982), 57 A.L.R.Fed. 150, 205." *Id.* at 42.

The court in *State of Ohio ex rel. Gray Road Fill, Inc. v. Wray* (Mar.

14, 1996), 109 Ohio App.3d 812 stated:

"[C]ourts in Ohio have noted that a mere lapse in time does not make an application to intervene untimely. See *S. Ohio Coal Co. v. Kidney* (1995), 100 Ohio App. 3d 661, 672, 654 N.E.2d 1017. Factors to consider include the point to which the suit has progressed, the length of time the applicant knew or should have known of the pending suit, and the reason for the delay in attempting to intervene. *S. Ohio Coal Co. v. Kidney* (1995), 100 Ohio App.3d at 672-673." *Id.* at 816.

In its brief filed with this board, Cabot argued that it had no notice of the hearing. It contended that "[a]uthority exists that a board of revision has no authority to dismiss a complaint against a complainant that had no notice of a hearing on the complaint." *Id.* at 2. While this may be true, we would point out

that Trenberth, LLC was the complainant in this case, not Cabot. The BOR gave the statutorily required notice to the known owners at the time in question.

However, the court in *Likover v. Cleveland* (1978), 60 Ohio App.2d 154, stated:

“In general, the basis of an alleged right to intervene is balanced against trial convenience and potential prejudice to the rights of original parties. *Intervention as of right *** may be granted at a time in the proceedings when permissive intervention *** would not.* That is, in cases of permissive intervention, greater consideration may be given to undue delay and prejudice in adjudicating the rights of the original parties, whereas *in cases of intervention of right, the court may give the greater consideration to possible prejudice to the intervenor in protecting his interest if intervention is not granted.*” (Emphasis added.) *Id.* at 158-159.

In *Tomcany v. Range Constr.*, Lake App. No. 2003-L-071, 2004 Ohio 5314, the court elucidated as follows:

“According, a different standard must be applied depending on whether the proposed intervenor has a right to intervene or may do so only permissively. ‘Where an intervenor has a right to intervene, the scales tip in favor of allowing intervention despite the existence of conditions which might otherwise militate against intervention, including timeliness.’ *HER, Inc. ex rel. Stonebridge Corp. v. Parenteau*, 153 Ohio App. 3d 704, 2003 Ohio 4370, at P14, 795 N.E.2d 720.” *Id.* at ¶ 42.

The court therein concluded that “courts must give liberal consideration to requests to intervene as of right.” *Id.* at ¶ 43.

In *Bd. of Edn. for the Berea City School Dist. v. Cuyahoga Cty. Bd. of Revision* (April 26, 2002), BTA Nos. 2001-M-463, et seq., unreported, the board stated as follows:

“In *City of Columbus v. Franklin Cty. Bd. of Revision* (Interim Order, July 13, 2001), BTA Nos. 1998-M-1249, et seq. unreported, this board concluded that a subsequent owner of real property succeeds to the rights of a former owner held in a subject property. Under R.C. 5715.19(D), a subsequent owner may participate in any valuation proceedings commenced upon the filing of a valuation complaint.” *Id.* at 2-3.

Thus, Cabot had a right to intervene in the case before the BOR.

Although we find no fault on the part of the BOR - indeed, it may have granted the motion to intervene if Cabot had not directly appealed to this board - we must weigh the potential prejudice to the original parties along with that of the intervenor. In doing so, we find the intervenor’s potential prejudice and loss to be for greater considering the ramifications of losing the right to contest the tax year (2005) for which the subject complaint was filed. Therefore, we find it necessary to grant Cabot’s motion to intervene to protect appellant’s rights.

As a consequence, the BOR determination must, and hereby is, reversed. The matter is remanded for further proceedings. Upon remand the BOR is directed to provide Cabot, Trenberth, LLC and Oak Hill Banks with due notice and a hearing in accordance with the provisions of the applicable law.

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OHIO BOARD OF TAX APPEALS

Galion Partners, LLC,)
)
 Appellant,) (REAL PROPERTY TAX)
)
 vs.) DECISION AND ORDER
)
 Marion County Board of Revision)
 and the Marion County Auditor,)
)
 Appellees.)

APPEARANCES:

For the Appellant - Stephen Swaim, Esq.
118 East Main Street
Columbus, Ohio 43215

For the County Appellees - Jim Slagle
Marion County Prosecuting Attorney
Jennifer S. M. Croskey
Assistant Prosecuting Attorney
134 East Center Street
Marion, Ohio 43302

Entered April 27, 2007

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

The Board of Tax Appeals now considers the motion filed March 12, 2007 by appellant Galion Partners, LLC (“property owner”) requesting that this board remand this case to the Marion County Board of Revision (“BOR”) to conduct a hearing. We grant the property owner’s motion to remand.¹

In its motion, the property owner asserts that after filing its complaint with the BOR, it did not receive notice of a hearing prior to receipt of the BOR’s

¹ We do not find support in the record for appellant’s accompanying request for costs. Accordingly, that portion of appellant’s motion is denied.

decision. Affidavit attached to motion.² The property owner contends that without the BOR hearing, it would be precluded from having certain evidence admitted into the record for consideration by this board. The BOR's response to appellant's motion opposes a remand, arguing that evidence could still be admitted at a hearing before this board if appellant demonstrates good cause pursuant to R.C. 5715.19(G).³

While it may be true that appellant could potentially supplement the record before this board, the BOR's response does not address the relevant issue of whether the BOR conducted a hearing to determine value and, if so, whether appellant was properly notified of that hearing, as required by R.C. 5715.19(C). Pursuant to R.C. 5715.11, a county board of revision must hear and determine a value for each valid complaint filed with it. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1996), 74 Ohio St.3d 639, 641. Based on our review of the record this board finds that a BOR hearing did occur. Statutory transcript at Ex. 4: BOR determination (" *** based upon the testimony and evidence given, the Board of Revision *** makes the following findings ****"). (Emphasis added.) The record, however, contains no notice of the BOR hearing at which testimony was given. Consequently, we also find that appellant was not properly notified of that hearing.

² While the board generally does not rely on information provided via affidavit, in this instance, the record supports the affiant's representations. See, e.g., *Oakbrook Realty Corp. v. Blout* (1988), 48 Ohio App.3d 69; *In re Rea* (1989), 61 Ohio Misc. 2d 732, 740-741; cf. *Raskin v Limbach* (Feb. 2, 1988), BTA No. 1986-F-28, unreported, at 11, fn. 1.

³ This provision precludes evidence on appeal where a complainant fails to provide to a BOR "all information or evidence within the complainant's knowledge or possession that affects the real property that is the subject of the complaint" and then attempts to offer such evidence on appeal. Nevertheless, if a complainant is deprived of an opportunity to present evidence by not receiving notice of a BOR hearing, then R.C. 5715.19(G) would be inapplicable to preclude evidence on appeal.

The legislature specifically requires notice of BOR hearings be given to a property owner by certified mail. R.C. 5715.19(C) provides in pertinent part as follows:

“Each board of revision *shall notify* any complainant and also the property owner, if his address is known, when a complaint is filed by one other than the property owner, *by certified mail, not less than ten days prior to the hearing of the time and place the same will be heard.*” (Emphasis added).

Accordingly, it is improper for a county board of revision to conduct a hearing and determine value unless it can demonstrate first that notice of its hearing was sent to and received by the complainant in compliance with the requirements of R.C. 5715.19(C). See *Gnandt v. Cuyahoga Cty. Bd. of Revision* (May 14, 1998), Cuyahoga App. Nos. 72488 and 72489, unreported (reversing this board’s affirmance of a board of revision’s dismissal of a complaint for failure to prosecute where the board of revision was unable to affirmatively demonstrate its compliance with the express requirements of R.C. 5715.19(C)); *Quinn v. Franklin Cty. Bd. of Revision* (May 7, 1999), BTA No. 1998-L-210, unreported; *Bd. of Edn. of the Delaware City Schools v. Delaware Cty. Bd. of Revision* (Feb. 5, 1999), BTA No. 1997-L-871, unreported.

In this case, the evidence supports a finding that the property owner was not “properly notified” of the BOR hearing. *Gnandt, supra*. Accordingly, it was improper for the BOR to conduct a hearing on appellant’s complaint and issue a determination when the complainant was not adequately notified of the hearing date.

Given the facts presented, we conclude that the BOR’s determination of the subject complaint is unreasonable, and the same is hereby vacated. This matter is

remanded to the Marion County Board of Revision with instructions to schedule such proceedings as are necessary to make a determination of value, consistent with this decision.

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OHIO BOARD OF TAX APPEALS

Rose Hill Securities and)	CASE NOS. 2004-M-1163
Rose Hill Burial Park Association, ¹)	2004-M-1164
	)	2004-M-1165
Appellant,)	
	)	(REAL PROPERTY TAX)
vs.)	
	)	ORDER
Summit County Board of Revision,)	
Summit County Auditor, and the	)	(Retaining Jurisdiction and
Copley-Fairlawn City School District	)	Consolidating Appeals)
Board of Education,)	
)	
Appellees.)	

APPEARANCES:

3	For the Appellant	- Roetzel & Andress Amie L. Bruggeman 222 South Main Street Akron, Ohio 44308
3	For the County Appellees	- Sherri Bevan Walsh Summit County Prosecuting Attorney Milton C. Rankins Assistant Prosecuting Attorney 220 South Balch Street Suite 118 Akron, Ohio 44302-1606
3	For the Appellee Copley-Fairlawn City School Dist. Board of Education	- Britton, Smith, Peters & Kalail Co., L.P.A. David A. Rose David H. Seed Summit One, Suite 540 4700 Rockside Road Cleveland, Ohio 44131-6814

Entered October 28, 2005

¹ The board sua sponte corrects the case caption in this matter to accurately reflect the parties' capacity.

The Board of Tax Appeals considers this matter pursuant to a "motion to dismiss" filed in BTA No. 2004-M-1165, and, as the same issue is present in BTA No. 2004-M-1164, sua sponte with regard to that appeal.

The Summit County Board of Revision ("BOR") determined the value of the Rose Hill Burial Park for tax year 2003. The burial park comprises six parcels of property and straddles two school districts. Most of the burial park is located in the Copley-Fairlawn City School District with a small portion located in the Fairlawn-Revere Local School District.

Portions of the property are owned by two separate entities. Rose Hill Securities Co. is the owner of parcel no. 78-00003, located in the Fairlawn-Revere Local School District. The valuation challenge for that parcel is companion case no. 2004-M-1163. Rose Hill Burial Park Association, Inc. is the owner of parcel nos. 78-00001 and 78-00002, also located in the Fairlawn-Revere Local School District. These parcels are the subjects of BTA No. 2004-M-1164. Rose Hill Burial Park Assoc., Inc. is also the owner of parcel nos. 09-02749, 09-2750, and 09-02753. These three parcels are located in the Copley-Fairlawn City School District and are the subjects of BTA No. 2004-M-1165.

Complaints were filed on all six parcels with the BOR. The complaints properly identified the owners of the individual parcels owned. A single hearing was held.

The matters were considered by the BOR and determinations were made. Appeals were filed with this board from determinations made by the BOR.

However, the appeals for parcels owned by Rose Hill Burial Park Association, Inc. were filed in the name of Rose Hill Securities, Inc. Counsel for the Copley-Fairlawn City School District Board of Education ("BOE") filed a motion to dismiss. As the same issue arises with regard to the property owned by Rose Hill Burial Park Association, Inc., located in Fairlawn-Revere School District, the board considers the issue sua sponte with regard to that appeal.

Counsel for the BOE addresses the question of standing. Counsel points out that Rose Hill Securities Co. did not file the underlying complaints before the BOR; the complaints were filed in the name of the property owner, Rose Hill Burial Park Association, Inc. By not filing the complaints before the BOR, counsel argues, Rose Hill Securities does not fall within the group of persons prescribed by R.C. 5717.01 who are authorized to file a notice of appeal challenging the actions of a board of revision. Without standing, counsel argues, any appeal filed by Rose Hill Securities fails to vest jurisdiction in this board.

It is well established only complainants² before the board of revision have standing to take an appeal to the Board of Tax Appeals. *Bd. of Edn. v. Bd. of Revision* (1973), 34 Ohio St.2d 231, overruled on other grounds in *Renner v. Tuscarawas Cty. Bd. of Revision* (1991), 59 Ohio St.3d 142; *Lindbloom v. Bd. of Tax Appeals* (1949), 151 Ohio St. 250. *Bd. of Edn.* addressed the situation in which a school board, which had not filed a complaint before a board of revision,

² An exception to this general rule was crafted by the Ohio Supreme Court in *Columbus Apartments Assoc. v. Bd. of Revision* (1981), 67 Ohio St.2d 85 where the court held "The right of a property owner to appeal

attempted to participate in an appeal filed with the Board of Tax Appeals by a proper owner. In *Bd. of Edn.*, the court held:

"A 'hearing' is a proceeding of relative formality, generally public, with definite issues of fact or of law to be tried, in which parties proceeded against have a right to be heard; an 'appeal' is a complaint to a higher tribunal of an error or injustice committed by a lower tribunal, in which the error or injustice is sought to be corrected or reversed. Black's Law Dictionary (4 Ed.). It is fundamental, therefore, that under ordinary circumstances only those who are parties at a hearing have a right of appeal. To hold otherwise would be to destroy the very purpose of the hearing, *i.e.*, to collect all relevant evidence, and would permit an interested person, such as appellant herein, to not participate in the hearing, hoping for favorable results, and then, if the results were unfavorable, to become a party to an appeal and present additional evidence at the appellate level." *Id.* at 233, 234.

The board has relied upon *Bd. of Edn.* to support a conclusion that a notice of appeal failed to vest jurisdiction to consider the valuation of a particular property.³ For example, in *Shumaker, Loop & Kendrick v. Lucas Cty. Bd. of Revision* (Feb. 24, 1995), BTA No. 1994-D-1479, unreported, the board held that a notice of appeal filed in the name of a property owner's attorney failed to vest jurisdiction with this board. In that appeal, however, the board specifically found that the law firm had not participated at the board of revision level, either by filing a complaint on behalf of the property owner or participating in the appeal. In *Travis v. Montgomery Cty. Bd. of Revision* (June 18, 2004), BTA No. 2003-G-

Footnote contd. _____

the determination of a board of revision, where a complaint has been successfully pursued by a third party, does not depend upon the owner having filed a complaint pursuant to R. C. 5715.19." *Id.* at 90.

³ The board has also relied upon *Bd. of Edn.* in cases where both the notice of appeal and the complaint before a board of revision fail to name the owner. See, e.g., *Real Estate Value Consultants v. Hamilton Cty. Bd. of Revision* (June 8, 1990), BTA No. 1989-E-398, unreported.

1623, unreported, a complaint was originally filed with a board of revision by a board of education. The property owner did not participate before the board of revision, either by filing a counter-complaint or attending the hearing. Once the board of revision's decision was issued, a notice of appeal was filed with the Board of Tax Appeals challenging the value determination made. The notice of appeal listed an individual shareholder of the corporate property owner as the "owner." This board concluded, under the authority of *Bd. of Edn.*, supra, and *Shumaker, Looper & Kendrick*, supra, that the notice of appeal failed to vest jurisdiction. Had the board made the opposite finding, the BOR's hearing would have been circumvented.

In the present matter, however, the property owner, Rose Hill Burial Park Association, Inc., did file a complaint with the BOR and participated in the hearing before that body. Thus, this is not a case of a non-participant attempting to circumvent a lower tribunal. Thus, the board does not find the holding in *Bd. of Edn.*, supra, to be applicable.⁴

While the BOE's counsel compares the failure to identify the owner on a notice of appeal with the failure to identify the owner of property on a complaint filed with a board of revision, such comparison is not perfect. A

⁴ The board acknowledges that it has issued other cases regarding misnamed appellants on a notice of appeal. However, in each of those cases, the error was first made upon the complaint or counter-complaint. See, e.g., *Bd. of Edn. for the Washington Local Schools v. Lucas Cty. Bd. of Revision* (Nov. 3, 2000), BTA Nos. 1997-V-1066, et seq., unreported (where the board corrected the representation of facts made by counsel for the Board of Education of the Washington Local Schools to reflect that the original counter-complaint was improperly filed.); *Bd. of Edn. of the Delaware City Schools v. Delaware Cty. Bd. of Revision* (Jun. 21, 1996), BTA Nos. 1995-A-1093 and 1995-A-1202, unreported (underlying complaint filed in the name of wrong board of education).

properly filed complaint with a board of revision imposes certain duties upon the auditor. A valid complaint must include all information that goes to the core of procedural efficiency. Anything that would affect the auditor's ability to provide notice as is statutorily required runs to the core of procedural efficiency. *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 80 Ohio St.3d 591, 1998-Ohio-179. As the auditor is statutorily obligated to notify the owner that a challenge to the property value has been made, the owner of a subject property must be listed on the face of a complaint. *Trotwood-Madison City School Dist. v. Montgomery Cty. Bd. of Revision* (June 30, 1997), BTA No. 1995-S-1282, unreported.

The obligations placed upon this board when a notice of appeal is filed are not the same as those placed upon the auditor when a complaint is filed. In *GAMED Investment Co. v. Cuyahoga Cty. Bd. of Revision* (Oct. 28, 1994), BTA Nos. 93-G-285, 93-D-1167, unreported, the board considered the validity of a notice of appeal which did not use the Department of Tax Equalization form prescribed for appeals to this board. In that matter, the board determined that, along with a copy of the board of revision's determination letter, the critical information to be presented to this board is as follows:

**** 1) Complaint number assigned by the Board of Revision; 2) Parcel number of the subject property; 3) The date of the Board of Revision's decision; 4) Taxing year; 5) Taxable values of the property as determined by the Board of Revision."

This board concluded that the above-identified information was sufficient for this board to inform all interested parties of the substance of appellant's appeal.⁵ The identification of the owner was not found to be information which ran to the core of procedural efficiency.

When the complaint was properly filed, but the notice of appeal identified one other than the owner, this board has held that the misnomer can be corrected by a substitution of real party in interest. *Upper Arlington City Schools v. Franklin Cty. Bd. of Revision* (May 17, 2002), BTA No. 2001-N-1356, unreported; *Gammarino v. Hamilton Cty. Bd. of Revision* (Jan. 3, 1997), BTA No. 1996-K-280, unreported; *Ashcroft v. Stark Cty. Bd. of Revision* (Oct. 16, 1992), BTA No. 1990-K-603, unreported; *Bd. of Edn. of the Mentor Exempted Village School Dist. v. Lake Cty. Bd. of Revision* (Interim Order, Feb. 16, 1990), BTA No. 1989-J-992, unreported. The board finds it appropriate to do the same in this appeal. The captions shall be corrected to identify Rose Hill Burial Park Association. Further, the matters shall be consolidated with BTA No. 2004-M-1163 for hearing and disposition purposes.

Given the foregoing, the board finds that R.C. 5717.01 has been satisfied and jurisdiction has properly vested. The matters will be set in the ordinary course of the board's business.

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⁵ In later decisions, the board held that even less information is required to be included on a notice of appeal. *Leach v. Hamilton Cty. Bd. of Revision* (Aug. 21, 1998), BTA Nos. 1998-M-44, et seq., unreported (concluding that in an appeal from a decision of a county board of revision, it is sufficient to simply state that the appellant is appealing such decision - no other information is necessary).

[§ 133-860]

Sec. 5715.07. **Public inspection of documents relating to assessments.**—All files, statements, returns, reports, papers, or documents of any kind relating to the assessment of real property which are in the office of a county auditor or county board of revision or in the official custody or possession of such officer or board shall be open to public inspection.

[§ 133-880]

Sec. 5715.08. **Minutes of meetings; preservation of minutes and evidence.**—The county board of revision shall take full minutes of all evidence given before the board, and it may cause the same to be taken in shorthand and extended in typewritten form. The secretary of the board shall preserve in his office separate records of all minutes and documentary evidence offered on each complaint.

[§ 133-900]

Sec. 5715.09. **Organization of county board of revision; meetings; record.**—Each county board of revision shall organize annually on the second Monday in January by the election of a chairman for the ensuing year. The county auditor shall be the secretary of the board. He shall call the board together as often as necessary during any year, keep an accurate record of the proceedings of the board in a book kept for the purpose, and perform such other duties as are incidental to the position.

[§ 133-925]

Sec. 5715.10. **Valuation of real property; county board of revision may summon and examine persons as to property.**—The county board of revision shall be governed by the laws concerning the valuation of real property and shall make no change of any valuation except in accordance with such laws.

The board may call persons before it and examine them under oath as to their own or another's real property to be placed on the tax list and duplicate for taxation, or the value thereof. If a person notified to appear before the board refuses or neglects to appear at the time required, or appearing, refuses to be sworn or answer any question put to him by the board or by its order, the chairman of the board shall make a complaint thereof in writing to the probate judge of the county, who shall proceed against such person in the same manner as provided in section 5711.37 of the Revised Code.

(As amended by S.B. 361, Laws 1953, effective October 1, 1953.)

[§ 133-945]

Sec. 5715.11. **Duty of county board of revision to hear complaints.**—The county board of revision shall hear complaints relating to the valuation or assessment of real property as the same appears upon the tax duplicate of the then current year. The board shall investigate all such complaints and may

increase or decrease any such valuation or correct any assessment complained of, or it may order a reassessment by the original assessing officer.

[§ 133-965]

Sec. 5715.12. **Duty to give notice before increasing valuation; service.**—The county board of revision shall not increase any valuation without giving notice to the person in whose name the property affected thereby is listed and affording him an opportunity to be heard. Such notice shall describe the real property, the tax value of which is to be acted upon, by the description thereof as carried on the tax list of the current year, and shall state the name in which it is listed; such notice shall be served by delivering a copy thereof to the person interested, by leaving a copy at the usual place of residence or business of such person, or by sending the same by registered letter mailed to the address of such person. If no such place of residence or business is found in the county, then such copies shall be delivered or mailed to the agent in charge of such property. If no such agent is found in the county, such notice shall be served by an advertisement thereof inserted once in a newspaper of general circulation in the county in which the property is situated. Notices to the respective persons interested in different properties may be united in one advertisement under the same general heading. Notices served in accordance with this section shall be sufficient.

[§ 133-985]

[ *Caution: The Ohio Supreme Court determined in Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision (2001), ¶ 403-001 and Rubbermaid, Inc. v. Wayne Cty. Auditor et al. (2002), ¶ 403-118 that R.C. 5715.13 and R.C. 5715.19, as amended by Sub. H.B. No. 694, violate Sec. 28, Article II of the Ohio Constitution. CCH.*]

Sec. 5715.13. **Application for decrease in valuation.**—The county board of revision shall not decrease any valuation unless a party affected thereby or who is authorized to file a complaint under section 5715.19 of the Revised Code makes and files with the board a written application therefor, verified by oath, showing the facts upon which it is claimed such decrease should be made.

(As amended by H.B. 694, Laws 1998, effective December 21, 1998, applicable to any complaint that was timely filed under either of those sections [5715.13 or 5715.19] respecting valuations for tax year 1994, 1995, 1996, or 1997; and to complaints filed for tax years 1998 and thereafter.)

[§ 134-005]

Sec. 5715.14. **Action certified to auditor; correction of tax lists.**—The county board of revision shall certify its action to the county auditor, who shall correct the tax list and duplicate according to the deductions and additions ordered by the board in

the manner provided by law for making corrections thereof. If the tax duplicate has been delivered to the county treasurer, the auditor shall certify such corrections to the treasurer, who shall enter such corrections on his tax duplicate.

§ 134-025

Sec. 5715.15. Reporting of omissions and corrections in property valuations.—When the county board of revision discovers that any taxable land, building, structure, improvement, minerals, or mineral rights have escaped taxation or been listed for taxation at less than their taxable value in a current year or in any year during the five years next preceding, the board may investigate, the same and report to the county auditor all the facts and information in its possession which relate to the same. The auditor shall make the inquiries and corrections which he is authorized and required by law to make in other cases in which real property has escaped taxation or has been improperly listed or valued for taxation.

(As amended by S.B. 109, Laws 1957; S.B. 370, Laws 1959; H.B. 337, Laws 1965, effective November 5, 1965.)

§ 134-045

Sec. 5715.16. Corrections and assessments.—On the second Monday of June, annually, the county auditor shall lay before the county board of revision the returns of his assessment of real property for the current year, and such board shall forthwith proceed to revise the assessment and returns of such real property. If the board finds that any tract, lot, or parcel of land, or any buildings, structures, or improvements thereon, or any minerals therein, or rights thereto have been improperly listed either as to the name of the owner or the description or quantity thereof, or have been incorrectly valued, or have been omitted and not yet valued, it shall make the necessary corrections and give to each such incorrectly valued or omitted tract, lot, or parcel of land, or any buildings, structures, or improvements thereon, or any minerals therein or rights thereto, their corrected taxable value.

The auditor shall not make up his tax list and duplicate nor advertise as provided in section 5715.17 of the Revised Code until the board has completed its work under this section and returned to the auditor all the returns laid before it with the revisions thereof.

(As amended by S.B. 109, Laws 1957; S.B. 370, Laws 1959; H.B. 337, Laws 1965, effective November 5, 1965.)

§ 134-065

Sec. 5715.17. Notice of completion of work of equalization; county auditor to furnish certificates and notice.—When the county board of revision has completed its work of equalization and transmitted the returns to him, the county auditor

shall give notice by advertising in two newspapers of opposite politics published in and of general circulation throughout the county that the tax returns for the current year have been revised and the valuation completed and are open for public inspection in his office, and that complaints against any valuation or assessment, except the valuations fixed and assessments made by the department of taxation will be heard by the board, stating in the notice the time and place of the meeting of such board. Such advertisement shall be inserted in a conspicuous place in each such newspaper and be published daily for ten days, unless there is no daily newspaper published in and of general circulation throughout such county, in which event such advertisement shall be so published once each week for two weeks.

The auditor shall, upon request, furnish to any person a certificate setting forth the assessment and valuation of any tract, lot, or parcel of real estate or any specific personal property, and mail the same when requested to do so upon receipt of sufficient postage.

The auditor shall furnish notice to boards of education of school districts within the county of all hearings, and the results of such hearings, held in regard to the reduction or increasing of tax valuations in excess of one hundred thousand dollars directly affecting the revenue of such district.

(As amended by S.B. 361, Laws 1953; S.B. 115, Laws 1965, effective September 6, 1965.)

§ 134-085

Sec. 5715.18. Additional notice of change in assessment.—In addition to the printed notice prescribed in section 5715.17 of the Revised Code, the tax commissioner may provide such additional notice of any change made in the assessment of any tract, lot, or parcel of real estate, or improvement thereon or minerals or mineral rights therein in such form and at such times as the commissioner deems advisable. Such additional notices shall be delivered to the parties interested by the method the commissioner orders.

(As amended by H.B. 920, Laws 1976; H.B. 260, Laws 1983, effective September 27, 1983.)

§ 134-100

⚠ Caution: The Ohio Supreme Court determined in *Cincinnati School Dist Bd of Edn. v. Hamilton Cty. Bd of Revision* (2001), ¶ 403-001 and *Rubbermaid, Inc. v. Wayne Cty. Auditor et al.* (2002), ¶ 403-118 that R.C. 5715.13 and R.C. 5715.19, as amended by Sub. H.B. No. 694, violate Sec. 28, Article II of the Ohio Constitution. ECH.]

Sec. 5715.19. Complaints; tender of tax; determination of common level of assessment.—(A) As used in this section, "member" has the same meaning as in section 1705.01 of the Revised Code.

§ 134-025 § 5715.15

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(1) Subject to division (A)(2) of this section, a complaint against any of the following determinations for the current tax year shall be filed with the county auditor on or before the thirty-first day of March of the ensuing tax year or the date of closing of the collection for the first half of real and public utility property taxes for the current tax year, whichever is later:

(a) Any classification made under section 5713.041 of the Revised Code;

(b) Any determination made under section 5713.32 or 5713.35 of the Revised Code;

(c) Any recoupment charge levied under section 5713.35 of the Revised Code;

(d) The determination of the total valuation or assessment of any parcel that appears on the tax list, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code;

(e) The determination of the total valuation of any parcel that appears on the agricultural land tax list, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code.

Any person owning taxable real property in the county or in a taxing district with territory in the county, such as a person's spouse, an individual who is retained by such a person and who holds a designation from a professional assessment organization, such as the institute for professionals in taxation, the national council of property taxation, or the international association of assessing officers; a public accountant who holds a permit under section 4701.10 of the Revised Code; a general or residential real estate appraiser licensed or certified under Chapter 4763. of the Revised Code; or a real estate broker licensed under Chapter 4735. of the Revised Code, who is retained by such a person; if the person is a firm, company, association, partnership, limited liability company, or corporation, an officer, a salaried employee, a partner, or a member of that person; if the person is a trust, a trustee of the trust; the board of county commissioners; the prosecuting attorney or treasurer of the county; the board of township trustees of any township with territory within the county; the board of education of any school district with any territory in the county; or the mayor or legislative authority of any municipal corporation with any territory in the county may file such a complaint regarding any such determination affecting any real property in the county, except that a person owning taxable real property in another county may file such a complaint only with regard to any such determination affecting real property in the county that is located in the same taxing district as that person's real property is located. The county auditor shall present to the county board of revision all complaints filed with the auditor.

(2) As used in division (A)(2) of this section, "interim period" means, for each county, the tax year to which section 5715.24 of the Revised Code

applies and each subsequent tax year until the tax year in which that section applies again.

No person, board, or officer shall file a complaint against the valuation or assessment of any parcel that appears on the tax list if it filed a complaint against the valuation or assessment of that parcel for any prior tax year in the same interim period, unless the person, board, or officer alleges that the valuation or assessment should be changed due to one or more of the following circumstances that occurred after the tax lien date for the tax year for which the prior complaint was filed and that the circumstances were not taken into consideration with respect to the prior complaint:

(a) The property was sold in an arm's length transaction, as described in section 5713.03 of the Revised Code;

(b) The property lost value due to some casualty;

(c) Substantial improvement was added to the property;

(d) An increase or decrease of at least fifteen per cent in the property's occupancy has had a substantial economic impact on the property.

(3) If a county board of revision, the board of tax appeals, or any court dismisses a complaint filed under this section or section 5715.13 of the Revised Code for the reason that the act of filing the complaint was the unauthorized practice of law or the person filing the complaint was engaged in the unauthorized practice of law, the party affected by a decrease in valuation or the party's agent, or the person owning taxable real property in the county or in a taxing district with territory in the county, may refile the complaint, notwithstanding division (A)(2) of this section.

(B) Within thirty days after the last date such complaints may be filed, the auditor shall give notice of each complaint in which the stated amount of overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination is at least seventeen thousand five hundred dollars to each property owner whose property is the subject of the complaint, if the complaint was not filed by the owner or the owner's spouse, and to each board of education whose school district may be affected by the complaint. Within thirty days after receiving such notice, a board of education; a property owner; the owner's spouse; an individual who is retained by such an owner and who holds a designation from a professional assessment organization, such as the institute for professionals in taxation, the national council of property taxation, or the international association of assessing officers; a public accountant who holds a permit under section 4701.10 of the Revised Code; a general or residential real estate appraiser licensed or certified under Chapter 4763. of the Revised Code; or a real estate broker licensed under chapter 4735. of the Revised Code, who is retained by such a person; or, if the property owner is a firm, company, association, partnership, limited

liability company, corporation, or trust, an officer, a salaried employee, a partner, a member, or trustee of that property owner, may file a complaint in support of or objecting to the amount of alleged overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination stated in a previously filed complaint or objecting to the current valuation. Upon the filing of a complaint under this division, the board of education or the property owner shall be made a party to the action.

(C) Each board of revision shall notify any complainant and also the property owner, if the property owner's address is known, when a complaint is filed by one other than the property owner, by certified mail, not less than ten days prior to the hearing, of the time and place the same will be heard. The board of revision shall hear and render its decision on a complaint within ninety days after the filing thereof with the board, except that if a complaint is filed within thirty days after receiving notice from the auditor as provided in division (B) of this section, the board shall hear and render its decision within ninety days after such filing.

(D) The determination of any such complaint shall relate back to the date when the lien for taxes or recoupment charges for the current year attached or the date as of which liability for such year was determined. Liability for taxes and recoupment charges for such year and each succeeding year until the complaint is finally determined and for any penalty and interest for nonpayment thereof within the time required by law shall be based upon the determination, valuation, or assessment as finally determined. Each complaint shall state the amount of overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect classification or determination upon which the complaint is based. The treasurer shall accept any amount tendered as taxes or recoupment charge upon property concerning which a complaint is then pending, computed upon the claimed valuation as set forth in the complaint. If a complaint filed under this section for the current year is not determined by the board within the time prescribed for such determination, the complaint and any proceedings in relation thereto shall be continued by the board as a valid complaint for any ensuing year until such complaint is finally determined by the board or upon any appeal from a decision of the board. In such case, the original complaint shall continue in effect without further filing by the original taxpayer, the original taxpayer's assignee, or any other person or entity authorized to file a complaint under this section.

(E) If a taxpayer files a complaint as to the classification, valuation, assessment, or any determination affecting the taxpayer's own property and tenders less than the full amount of taxes or recoupment charges as finally determined, an interest charge shall accrue as follows:

(1) If the amount finally determined is less than the amount billed but more than the amount ten-

dered, the taxpayer shall pay interest at the rate per annum prescribed by section 5703.47 of the Revised Code, computed from the date that the taxes were due on the difference between the amount finally determined and the amount tendered. This interest charge shall be in lieu of any penalty or interest charge under section 323.121 of the Revised Code unless the taxpayer failed to file a complaint and tender an amount as taxes or recoupment charges within the time required by this section, in which case section 323.121 of the Revised Code applies.

(2) If the amount of taxes finally determined is equal to or greater than the amount billed and more than the amount tendered, the taxpayer shall pay interest at the rate prescribed by section 5703.47 of the Revised Code from the date the taxes were due on the difference between the amount finally determined and the amount tendered, such interest to be in lieu of any interest charge but in addition to any penalty prescribed by section 323.121 of the Revised Code.

(F) Upon request of a complainant, the tax commissioner shall determine the common level of assessment of real property in the county for the year stated in the request that is not valued under section 5713.31 of the Revised Code, which common level of assessment shall be expressed as a percentage of true value and the common level of assessment of lands valued under such section, which common level of assessment shall also be expressed as a percentage of the current agricultural use value of such lands. Such determination shall be made on the basis of the most recent available sales ratio studies of the commissioner and such other factual data as the commissioner deems pertinent.

(G) A complainant shall provide to the board of revision all information or evidence within the complainant's knowledge or possession that affects the real property that is the subject of the complaint. A complainant who fails to provide such information or evidence is precluded from introducing it on appeal to the board of tax appeals or the court of common pleas, except that the board of tax appeals or court may admit and consider the evidence if the complainant shows good cause for the complainant's failure to provide the information or evidence to the board of revision.

(H) In case of the pendency of any proceeding in court based upon an alleged excessive, discriminatory, or illegal valuation or incorrect classification or determination, the taxpayer may tender to the treasurer an amount as taxes upon property computed upon the claimed valuation as set forth in the complaint to the court. The treasurer may accept the tender. If the tender is not accepted, no penalty shall be assessed because of the nonpayment of the full taxes assessed.

(As amended by S.B. 109, Laws 1957; S.B. 370, Laws 1959; H.B. 1, Laws 1961; H.B. 337, Laws 1965; S.B. 428 and H.B. 931, Laws 1971; S.B. 423,

Laws 1974; H.B. 920, Laws 1976; H.B. 1, Laws 1977; H.B. 648, Laws 1978; H.B.'s 736 and 1238, Laws 1980; S.B. 6, Laws 1981; H.B. 379, Laws 1982; H.B. 260, Laws 1983; H.B. 379, Laws 1984; H.B. 603, Laws 1988; H.B. 694, Laws 1998, effective December 21, 1998, applicable to any complaint that was timely filed under either of those sections [5715.13 or 5715.19] respecting valuations for tax year 1994, 1995, 1996, or 1997, and to complaints filed for tax years 1998 and thereafter; H.B. 390, Laws 2002, effective March 4, 2002.)

§ 134-140]

Sec. 5715.20. Certification of action; time for appeal; tax commissioner may request decisions.—(A) Whenever a county board of revision renders a decision on a complaint filed under section 5715.19 of the Revised Code, it shall certify its action by certified mail to the person in whose name the property is listed or sought to be listed and to the complainant if the complainant is not the person in whose name the property is listed or sought to be listed. A person's time to file an appeal under section 5717.01 of the Revised Code commences with the mailing of notice of the decision to that person as provided in this section. The tax commissioner's time to file an appeal under section 5717.01 of the Revised Code commences with the last mailing to a person required to be mailed notice of the decision as provided in this division.

(B) The tax commissioner may order the county auditor to send to the commissioner the decisions of the board of revision rendered on complaints filed under section 5715.19 of the Revised Code in the manner and for the time period that the commissioner prescribes. Nothing in this division extends the commissioner's time to file an appeal under section 5717.01 of the Revised Code.

(As amended by (H.B. 675), Laws 2002, effective March 14, 2003.)

§ 134-160]

Sec. 5715.21. Payment of tax shall not abate complaint or appeal.—Payment of the whole or any part of any real property tax or assessment for any year or any recoupment charge as to which a complaint or appeal is pending shall not abate the complaint or appeal or in any way affect the hearing and determination thereof.

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

§ 134-180]

Sec. 5715.22. Credit and repayment of overpaid taxes.—If upon consideration of any complaint against the valuation or assessment of real property filed under section 5715.19 of the Revised Code, or any appeal from the determination on such complaint, it is found that the amount of taxes, assessments, or recoupment charges paid for the year to which the complaint relates was in excess of the

amount due, then, whether or not the payment of said taxes, assessments, or charges was made under protest or duress, the county auditor shall, within thirty days after the certification to him of the final action upon such complaint or appeal, credit the amount of such overpayment upon the amount of any taxes, assessments, or charges then due from the person having made such overpayment, and at the next or any succeeding settlement the amount of any such credit shall be deducted from the amounts of any taxes, assessments, or charges distributable to the county or any taxing unit therein which has received the benefit of the taxes, assessments, or charges previously overpaid, in proportion to the benefits previously received. If after such credit has been made, there remains any balance of such overpayment, or if there are no taxes, assessments, or charges due from such person, upon application of the person overpaying such taxes the auditor shall forthwith draw a warrant on the county treasurer in favor of the person who has made such overpayment for the amount of such balance. The treasurer shall pay such warrant from the general revenue fund of the county. If there is insufficient money in said general revenue fund to make such payment, the treasurer shall pay such warrant out of any undivided tax funds thereafter received by him for distribution to any county or any taxing unit therein which has received the benefit of the taxes, assessments, or charges overpaid, in proportion to the benefits previously received, and the amount paid from the undivided tax funds shall be deducted from the money otherwise distributable to such county or other taxing unit of the county at the next or any succeeding settlement. At the next or any succeeding settlement after the refunding of such taxes, assessments, or charges, the treasurer shall reimburse the general revenue fund of the county for any payment made from such fund by deducting the amount of such payment from the money otherwise distributable to the county or other taxing unit in the county which has received the benefit of the taxes, assessments, or charges overpaid, in proportion to the benefits previously received.

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

APPEALS TO BOARD OF TAX APPEALS.

§ 134-200]

Sec. 5715.23. Abstract of real property transmitted to tax commissioner.—Annually, immediately after the county board of revision has acted upon the assessments for the current year as required under section 5715.16 of the Revised Code and the county auditor has given notice by advertisement in two newspapers that the valuations have been revised and are open for public inspection as provided in section 5715.17 of the Revised Code, each auditor shall make out and transmit to the tax commissioner an abstract of the real property of each taxing district in his county, in which he shall set forth the aggregate amount and valuation of

or orders made by the commissioner may be taken to the board of tax appeals by the taxpayer, by the person to whom notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner is required by law to be given, by the director of budget and management if the revenues affected by such decision would accrue primarily to the state treasury, or by the county auditors of the counties to the undivided general tax funds of which the revenues affected by such decision would primarily accrue. Appeals from the redetermination by the director of development under division (B) of section 5709.64 or division (A) of section 5709.66 of the Revised Code may be taken to the board of tax appeals by the enterprise to which notice of the redetermination is required by law to be given. Appeals from a decision of the tax commissioner concerning an application for a property tax exemption may be taken to the board of tax appeals by a school district that filed a statement concerning such application under division (C) of section 5715.27 of the Revised Code. Appeals from a redetermination by the director of job and family services under section 5733.42 of the Revised Code may be taken by the person to which the notice of the redetermination is required by law to be given under that section.

Such appeals shall be taken by the filing of a notice of appeal with the board, and with the tax commissioner if the tax commissioner's action is the subject of the appeal, with the director of development if that director's action is the subject of the appeal, or with the director of job and family services if that director's action is the subject of the appeal. The notice of appeal shall be filed within sixty days after service of the notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner or redetermination by the director has been given as provided in section 5703.37, 5709.64, 5709.66, or 5733.42 of the Revised Code. The notice of such appeal may be filed in person or by certified mail, express mail, or authorized delivery service. If the notice of such 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 notice sent by the commissioner or director to the taxpayer, enterprise, or other person of the final determination or redetermination complained of, and shall also 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.

Upon the filing of a notice of appeal, the tax commissioner or the director, as appropriate, shall

certify to the board a transcript of the record of the proceedings before the commissioner or director, together with all evidence considered by the commissioner or director in connection therewith. Such appeals or applications 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 commissioner or director, but upon the application of any interested party the board shall order the hearing of additional evidence, and it may make such investigation concerning the appeal as it considers proper.

(As amended by S.B. 174, Laws 1973; H.B. 920, Laws 1976; H.B. 634, Laws 1977; H.B. 351, Laws 1981; H.B. 260, Laws 1983; S.B. 124, Laws 1985; H.B. 321, Laws 1985; S.B. 19, Laws 1994; H.B. 612, and S.B. 287, Laws 2000; S.B. 200, Laws 2002, effective September 6, 2002.)

§ 135-150

Sec. 5717.03. Decisions of the board of tax appeals; certification effect.—(A) A decision of the board of tax appeals on an appeal filed with it pursuant to section 5717.01, 5717.01B, or 5717.02 of the Revised Code shall be entered of record on the journal together with the date when the order is filed with the secretary for journalization.

(B) In case of an appeal from a decision of a county board of revision, the board of tax appeals shall determine the taxable value of the property whose valuation or assessment by the county board of revision is complained of, or in the event the complaint and appeal is against a discriminatory valuation, shall determine a valuation which shall correct such discrimination, and shall determine the liability of the property for taxation, if that question is in issue, and the board of tax appeals' decision and the date when it was filed with the secretary for journalization shall be certified by the board by certified mail to all persons who were parties to the appeal before the board, to the person in whose name the property is listed, or sought to be listed, if such person is not a party to the appeal, to the county auditor of the county in which the property involved in the appeal is located, and to the tax commissioner.

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

(C) In the case of an appeal from a review, redetermination, or correction of a tax assessment, valuation, determination, finding, computation, or order of the tax commissioner, the order of the board of tax appeals and the date of the entry thereof upon its

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, findings, computation, or order, or correction or redetermination 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 situate 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 situate, 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 of appeals 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]

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

§ 135-265 § 5717.05

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 per cent 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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Court Rules

RULES OF CIVIL PROCEDURE

TITLE II. COMMENCEMENT OF ACTION AND VENUE; SERVICE OF PROCESS; SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS SUBSEQUENT TO THE ORIGINAL COMPLAINT; TIME

RULE 4.6 Process: Limits; Amendment; Service Refused; Service Unclaimed

RULE 4.6 Process: Limits; Amendment; Service Refused; Service Unclaimed

(A) Limits of effective service.

All process may be served anywhere in this state and, when authorized by law or these rules, may be served outside this state.

(B) Amendment.

The court within its discretion and upon such terms as are just, may at any time allow the amendment of any process or proof of service thereof, unless the amendment would cause material prejudice to the substantial rights of the party against whom the process was issued.

(C) Service refused.

If service of process is refused, and the certified or express mail envelope is returned with an endorsement showing such refusal, or the return of the person serving process states that service of process has been refused, the clerk shall forthwith notify, by mail, the attorney of record or, if there is no attorney of record, the party at whose instance process was issued. If the attorney, or serving party, after notification by the clerk, files with the clerk a written request for ordinary mail service, the clerk shall send by ordinary mail a copy of the summons and complaint or other document to be served to the defendant at the address set forth in the caption, or at the address set forth in written instructions furnished to the clerk. The mailing shall be evidenced by a certificate of mailing which shall be completed and filed by the clerk. Answer day shall be twenty-eight days after the date of mailing as evidenced by the certificate of mailing. The clerk shall endorse this answer date upon the summons which is sent by ordinary mail. Service shall be deemed complete when the fact of mailing is entered of record. Failure to claim certified or express mail service is not refusal of service within the meaning of division (C) of this rule.

(D) Service unclaimed.

If a certified or express mail envelope is returned with an endorsement showing that the envelope was unclaimed, the clerk shall forthwith notify, by mail, the attorney of record or, if there is no attorney of record, the party at whose instance process was issued. If the attorney, or serving party, after notification by the clerk, files with the clerk a written request for ordinary mail service, the clerk shall send by ordinary mail a copy of the summons and complaint or other document to be served to the defendant at the address set forth in the caption, or at the address set forth in written instructions furnished to the clerk. The mailing shall be evidenced by a certificate of mailing which shall be completed and filed by the clerk. Answer day shall be twenty-eight days after the date of mailing as evidenced by the certificate of mailing. The clerk shall endorse this answer date upon the summons which is sent by ordinary mail. Service shall be deemed complete when the fact of mailing is entered of record, provided that the ordinary mail envelope is not returned by the postal authorities with an endorsement showing failure of delivery. If the ordinary mail envelope is returned undelivered, the clerk

shall forthwith notify the attorney, or serving party, by mail.

(E) Duty of attorney of record or serving party.

The attorney of record or the serving party shall be responsible for determining if service has been made and shall timely file written instructions with the clerk regarding completion of service notwithstanding the provisions in Civ. R. 4.1 through 4.6 which instruct a clerk to notify the attorney of record or the serving party of failure of service of process.

[Effective: July 1, 1970; amended effective July 1, 1971; July 1, 1978; July 1, 1997.]

Staff Note (July 1, 1997 Amendment)

RULE 4.6 Process: Limits; amendment; service refused; service unclaimed

Prior to the 1997 amendment, service of process under this rule was permitted only by certified mail. It appears that service of process by express mail, i.e. as that sort of mail is delivered by the United States Postal Service, can always be obtained return receipt requested, and thus could accomplish the purpose of notification equally well as certified mail. Therefore, the amendment provides for this additional option for service.

Other amendments to this rule are nonsubstantive grammatical or stylistic changes.

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THE CONSTITUTION OF THE UNITED STATES

AMENDMENT XIV

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each house, remove such disability.

Section 4

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

OHIO CONSTITUTION

(Selected Provisions)

Article I

BILL OF RIGHTS

- O. Const. I § 1. Inalienable rights
- O. Const. I § 2. Equal protection and benefit
- O. Const. I § 3. Rights of assembly and petition
- O. Const. I § 4. Right to bear arms
- O. Const. I § 5. Right of trial by jury
- O. Const. I § 6. Slavery and involuntary servitude
- O. Const. I § 7. Religious freedom; encouraging education
- O. Const. I § 8. Habeas corpus
- O. Const. I § 9. Bail; cruel and unusual punishments
- O. Const. I § 10. Rights of criminal defendants
- O. Const. I § 11. Freedom of speech
- O. Const. I § 12. No transportation or forfeiture for crime
- O. Const. I § 13. Quartering troops
- O. Const. I § 14. Search and seizure
- O. Const. I § 15. No imprisonment for debt
- O. Const. I § 16. Redress for injury; due process
- O. Const. I § 17. No hereditary privileges
- O. Const. I § 18. Only general assembly may suspend laws
- O. Const. I § 19. Eminent domain
- O. Const. I § 19a. Wrongful death
- O. Const. I § 20. Powers not enumerated retained by people

O. Const. I § 1. Inalienable rights

All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

HISTORY: 1851 constitutional convention, adopted eff. 9-1-1851

O. Const. I § 2. Equal protection and benefit

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they

may deem it necessary, and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly.

HISTORY: 1851 constitutional convention, adopted eff. 9-1-1851

O. Const. I § 3. Rights of assembly and petition

The people have the right to assemble together, in a peaceable manner, to consult for their common good; to instruct their Representatives; and to petition the general assembly for the redress of grievances.

HISTORY: 1851 constitutional convention, adopted eff. 9-1-1851

O. Const. I § 4. Right to bear arms

The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power.

HISTORY: 1851 constitutional convention, adopted eff. 9-1-1851

O. Const. I § 5. Right of trial by jury

The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.

HISTORY: 1912 constitutional convention, am. eff. 1-1-13
1851 constitutional convention, adopted eff. 9-1-1851

O Const II § 26 . General laws to have uniform operation; laws other than school laws to take effect only on legislature's authority .

All laws, of a general nature, shall have a uniform operation throughout the State; nor, shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the General Assembly, except, as otherwise provided in this constitution.