

IN THE SUPREME COURT OF OHIO

HIN, LLC	)	CASE NO. 2008-2408
	)	
Appellee	)	
	)	
vs.	)	
	)	
CUYAHOGA COUNTY BOARD OF	)	
REVISION, CUYAHOGA COUNTY	)	
AUDITOR, AND TAX COMMISSIONER	)	
OF THE STATE OF OHIO	)	
	)	Appeal from the Ohio Board
Appellees	)	of Tax Appeals
	)	
and	)	Board of Tax Appeals Case
	)	No. 2006-A-712
BEDFORD BOARD OF EDUCATION	)	
	)	
Appellant	)	

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BRIEF OF APPELLANT,  
BEDFORD BOARD OF EDUCATION

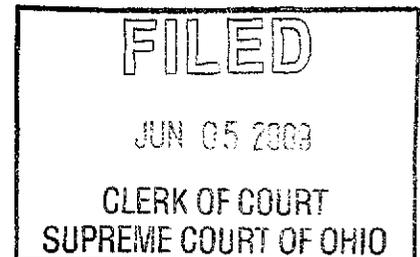
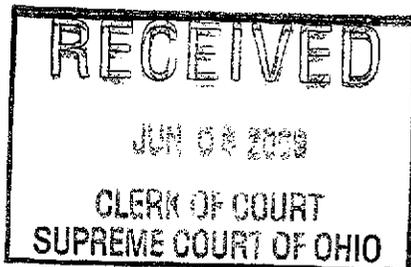
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## STATEMENT OF THE FACTS

This case is before the Supreme Court on appeal from a decision by the Ohio Board of Tax Appeals ("BTA"), and concerns the valuation of a parcel of real property for purposes of ad valorem real property taxation.

The property is owned by the appellee, HIN, LLC, and is located at 17500 Rockside Road, Bedford, Ohio, within the taxing district of the appellant, the Bedford Board of Education ("BOE"). The property has been assigned permanent parcel number 812-16-005 by the county auditor and the relevant tax year is 2004. (Supplement to the Brief ("Supp." 1-2)).

For tax year 2004 the county auditor valued the property at \$7,848,400. HIN, LLC disagreed with this value and on March 31, 2005 it filed a complaint with the Cuyahoga County Board of Revision requesting a value of \$5,000,000. The BOE filed a counter-complaint and became a party to the proceedings. (Supp 5-11).

The complaint and counter-complaint came before the board of revision for hearing. At the hearing HIN, LLC requested a value of \$4,900,000 based on a sale. The deed evidencing the sale and transfer of the property was recorded with the County Recorder on December 30, 2003. Evidence was also presented to the board of revision showing a second sale of the property.

This sale was for \$7,400,000 and the deed recorded on April 30, 2004. No witnesses testified, and the board of revision made no change in the property's value. (Supp. 22, 23). HIN, LLC appealed the decision by the board of revision to the BTA.

The appeal came before the BTA for hearing with appearances being made by HIN, LLC and the BOE; no appearance was made by the county appellees. (Supp. 30-31 (BTA Transcript ("Tr.") 5-6)). The sole witness called to testify at the at the hearing was Roger Ritley, a real estate appraiser called by HIN, LLC. (Supp. 32 (Tr. 12)). In addition, the deposition transcript of John Kuhn was introduced into evidence by agreement of the parties and consent of the BTA. (Supp. 31-32 (Tr. 7-10); Supp. 62-226 (Tr. 82-297)). The record before the BTA established the following.

As of January 1, 2004, the tax lien date, the property consisted of 34.5784 acres of land improved with a 78,500 square foot single tenant office building. (Supp. 12, 22). The building was leased to U.S. Bank for a period of fifteen years. (Supp. 41 (Tr. 47-48)). Mr. Ritley testified that the building was well designed and well maintained. (Supp. 35 (Tr. 24-25)).

The record also shows that in the later part of 2003 through early 2004 there were a number of transactions

involving the subject property, including two sales, a property split, and the negotiation and execution of the lease to U.S. Bank.

- Prior to September of 2003, the subject property along with 2.3911 acres of adjacent vacant land was owned by Tops Markets, LLC. (Supp. 70 (Tr. 29-30); Supp. 86, 116).
- At some point prior to September 8, 2003, Tops Markets, LLC agreed to sell all of the property which it owned (the subject property plus the adjacent 2.3911 acres) to U.S. Bank. (Supp. 80).
- Tops Markets, LLC and U.S. Bank negotiated a purchase price for the property of \$4,900,000 and entered into a contract for the purchase and sale of the property. At this point in time there were no leases on the property. (Supp. 80).
- Subsequent to entering into the purchase contract with Tops Markets, LLC, U.S. Bank decided that it did not want to purchase the property. Instead, U.S. Bank wanted to lease the property. (Supp. 80).

- JBK Properties<sup>1</sup> was identified as a potential buyer/lessor of the property in a sale-leaseback arrangement. (Supp. 80).
- It was agreed that U.S. Bank's interest in the purchase contract would be assigned to JBK. JBK agreed to purchase the property for the previously negotiated purchase price of \$4,900,000 contingent on U.S. Bank agreeing to lease the property. (Supp. 85-115).
- JBK's involvement in the transaction was set forth in a letter of intent between JBK, Tops Markets, LLC and U.S. Bank. An unsigned copy of the letter is attached as Exhibit 1 to John Kuhn's deposition. (Supp. 80-84). The agreement provided that U.S. Bank's interest in the purchase agreement would be assigned to JBK. JBK would purchase the property from Tops Markets, LLC for the previously agreed \$4,900,000. JBK would lease the building to U.S. Bank and would construct a 20,000 square foot warehouse building to be leased to U.S. Bank on the adjacent vacant land. Development incentives previously granted to U.S. Bank by the City of Bedford would remain in place.

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<sup>1</sup>John Kuhn was the principal and/or owner of both JBK Properties and JBK Cuyahoga Holdings LLC. (Supp. 62, (Deposition Transcript, John B. Kuhn ("Depo. Tr."), 8, 10)). These two corporate entities will be jointly referred to as "JBK" in this brief.

- On September 29, 2003 pursuant to the assignment agreement JBK and Tops Markets, LLC signed a purchase agreement to implement the letter of intent. (Supp. 85). This document provided that JBK would step into the position of U.S. Bank and purchase the property pursuant to terms previously negotiated between U.S. Bank and Tops Markets, LLC, including the purchase price of \$4,900,000. The document was contingent on the second term of the letter of intent, namely the lease of the building to U.S. Bank, being finalized within 60 days. (Supp. 86). The closing was scheduled to occur 20 days after expiration of the 60 day contingency period or on or before December 12, 2003. (Supp 85-86, Exhibit 2 to John Kuhn's deposition). Subsequently the agreement was amended to allow a closing on or before December 30, 2003. (Supp. 115). JBK admitted that it was not involved in negotiating the purchase price for the property. (Supp. 64 (Depo. Tr. 6-7)).
- As required by the September 8, 2003 letter of intent and the September 29, 2003 agreement, JBK and U.S. Bank negotiated a lease of the subject property. The lease was executed on November 1, 2003 for a fifteen year term with two five-year renewal options. (Supp. 117, 123). This was amended on December 11, 2003 so as to reflect

the decision to not build the warehouse on the adjacent vacant parcel of land. (Supp. 152).

- On December 24, 2003 two deeds were executed, one for the subject property and the other for the adjacent 2.3911 acres of vacant land. Both deeds were recorded on December 30, 2003 to publicly record the transaction. (Supp. 188-196).
- In the spring of 2004 JBK sold the property, subject to the U.S. Bank lease but without the adjacent 2.3911 acres of land, to HIN, LLC for \$7,400,000. HIN, LLC purchased the adjacent 2.3911 acres of vacant land for \$110,000. This 2.3911 acre parcel was not part of HIN's complaint filed with the board of revision. (Supp. 5, 197-227).

Prior to the tax lien date of January 1, 2004 the property was transferred to JBK for a sale price of \$4,900,000. The buyer of the property was not a party to setting the sale price. The sale price was negotiated between Tops Markets, LLC and U.S. Bank prior to September of 2003 and prior to the time JBK ever became involved in the transaction. Furthermore, the sale price was set before the lease between JBK and U.S. Bank was ever contemplated. The sale price did not reflect the change in the value of the property resulting from the execution of the lease.

Subsequent to the setting of the sale price between U.S. Bank and Tops Markets, LLC and prior to the tax lien date, the value of the property changed dramatically. The change in the value of the property was the result of the negotiation and execution of the lease between U.S. Bank and JBK.

The impact of the lease on the value of the property is shown in the sale of the property in early 2004. After the lease was in place JBK was able to sell the property for \$7,400,000, a figure close to the value set by the County Auditor of \$7,848,400.

In January of 2004, JBK was contacted by a potential purchaser of the property:

Q. So after you closed on this transaction and executed the lease and the restated lease, did there come a time when you decided to sell the property?

A. Yes.

Q. And what did you do when you went about selling the property?

A. Well, generally speaking, a local real estate broker named Scott Revolinski told me that he had a buyer that was involved in a 1031 Starker exchange, they were looking to buy a property, and asked me if I had any triple net lease properties that this buyer might consider.

(Supp. 67 (Depo. Tr. 17)).

This buyer expressed interest in the subject property, and in January of 2004 Hanna Neumann offered to purchase the subject property, as leased but without the adjacent 2.3

acres, for \$7,400,000. This offer was accepted. (Supp. 197-206). Mr. Kuhn testified that the only change that occurred to the property between the time when he signed the purchase agreement with Tops Markets, LLC and when Hanna Neumann made her offer to purchase the property for \$7,400,000 was the lease with U.S. Bank, a lease that had been executed prior to January 1, 2004 but after the \$4,900,000 sale price had been negotiated. (Supp. 72 (Depo. Tr. 38, line 14 - 39, line 20)). He also attributed the entire increase between the \$4,900,000 sale price negotiated between Tops Markets, LLC and U.S. Bank and the \$7,400,000 sale price offered by Hanna Neumann to the existence of the U.S. Bank lease. (Supp. 70 (Depo Tr. 27, lines 14-16)).

Hanna Neumann subsequently agreed to purchase the adjacent 2.3911 acres of vacant land for \$110,000.

On April 29, 2004 two deeds were executed to transfer the subject property and the adjacent land to HIN, LLC, Hanna Neumann's assignee. Both deeds were recorded on April 30, 2004. (Supp. 217-225).

The BTA did not use appraisal testimony to set the value of the property. Because there were two sales of the property within months of the tax lien date, the BTA relied on the sales to determine the fair market value of the property. (Appendix to Brief ("App."), 24).

The BTA found that the \$4,900,000 sale price negotiated prior to September 8, 2003 was the best evidence of value as of January 1, 2004. (App. 9). This was despite the fact that after that price was set and before the end of 2003 the property had changed significantly. Two plus acres of land were removed from the transaction and the property became subject to a very favorable lease between U.S. Bank and JBK. Mr. Kuhn of JBK admitted that the signing of the lease resulted in a substantial increase in the value of the land and allowed him to sell the property for \$7,400,000.

The BTA did not use the 2004 sale price of \$7,400,000 to set the value of the property. The BTA reasoned that the 2003 sale price was more reflective of the value of the property as of the tax lien date of January 1, than the 2004 sale price because the deed for the 2003 sale was recorded on December 30, 2003 and the deed for the 2004 sale was recorded on April 30, 2004. Focusing on when the deeds were recorded rather than on when the buyer and seller agreed upon a sale price the BTA concluded that the 2003 sale was closer to the tax lien date than the 2004 sale. (App. 22, 24).

## LAW AND ARGUMENT

Proposition of Law Number 1:

If a parcel of property is sold twice in close proximity to the tax lien date and after the first sale price is negotiated a lease is placed on the property, the second sale price which is negotiated after the lease comes into being and takes into consideration the existence of the lease is more reflective of the fair market value of the property after the lease than is the first sale price.

A. A RECENT ARM'S-LENGTH SALE OF PROPERTY CONSTITUTES THE BEST EVIDENCE OF VALUE, REGARDLESS OF WHETHER OR NOT THE PROPERTY IS ENCUMBERED BY A LEASE AT THE TIME OF SALE.

The BOE submits that the decision by the BTA to value the property based on a sale price that was negotiated prior to the existence of the property lease to U.S. Bank, and where the property subsequently sold for a higher price after the execution of the lease, was in error. The BOE further submits that an order should issue valuing the subject property at \$7,400,000 as of January 1, 2004 and for subsequent tax years until the final resolution of HIN, LLC's complaint.

It is undisputed that the property was subject to two arms's-length sales in close proximity to the tax lien date. The first sale of the property for \$4,900,000 occurred in the last quarter of 2003. The second sale of the property of \$7,400,000 occurred in the first quarter of 2004 after the property was leased.

Under Ohio law the sale price in a recent arm's-length sale of real property determines taxable value of the property

for ad valorem tax purposes. *Rhodes v. Hamilton Cty. Bd. of Revision*, 117 Ohio St.3d 532, 2008-Ohio-1595, 885 N.E.2d 236; *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, 834 N.E.2d 782. Because of this rule, if there is a recent arm's-length sale, appraisal evidence is not only not needed, it is not relevant. As noted by the this court in *Cummins Property Services, L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, 885 N.E.2d 222, ¶13, "[a]t the very heart of Berea lies the rejection of appraisal evidence of the value of the property whenever a recent, arm's-length sale price has been offered as evidence of value." Also see, *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 45, 2008-Ohio-1588, 885 N.E.2d 934, ¶8. Consequently the BTA was correct in not considering the appraisal evidence of Mr. Ritley. (App. 24).

The rule that a recent sale of the property determines the value of the property for tax purposes also applies when the property is subject to a lease at the time of sale. Where there has been a recent arm's-length sale of the property between a willing buyer and a willing seller the sale price of the property is the "true value" of the property for taxation purposes even if the property is encumbered with a lease. *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of*

Revision, 106 Ohio St.3d 269, 2005-Ohio-4979, 834 N.E.2d 782;  
*Cummins Property Services, L.L.C. v. Franklin Cty. Bd. of*  
Revision, 117 Ohio St.3d 516, 2008-Ohio-1473, 885 N.E.2d 222;  
*Rhodes v. Hamilton Cty. Bd. of Revision*, 117 Ohio St.3d 532,  
2008-Ohio-1595, 885 N.E.2d 236.

In *Rhodes v. Hamilton Cty. Bd. of Revision*, 117 Ohio  
St.3d 532, 2008-Ohio-1595, 885 N.E.2d 236, ¶13, this court  
stated:

[F]irst, MA Richter generally contends that Berea does not apply here because the property in this case is encumbered by a long-term lease to Walgreens. That position is not well taken. In *Berea*, where long-term leases also encumbered the property, we held 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.'" *Id.*, 106 Ohio St.3d 269, 2005-Ohio-4979, 834 N.E.2d 782, ¶13, quoting R.C. 5713.03. Although *Berea* involved an encumbrance of a lease for "below market" rent and this case involves "above market" rent, this is a distinction without legal significance. .

The underlying basis for all of these decisions is that where an encumbrance, such as a lease, is the owner's attempt to maximize the value of its property, an arm's-length sale of the property between a willing buyer and seller constitutes true value for tax purposes. As stated by the court in *AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision*, 119 Ohio St.3d 563, 2008-Ohio-5203, 895 N.E.2d 830, ¶19:

In *Cummins*, we held as a general matter that the effect of encumbrances on the sale price of the fee interest did not make that sale price unreflective of the true value

of the property. We predicated our holding in part on the observation that encumbering the property constituted an owner's method of realizing the value of the property. *Cummins*, ¶27.

It is undisputed that the property was sold twice in close proximity to the tax lien date. It sold in the last quarter of 2003 for \$4,900,000 and it sold in the first quarter of 2004 for \$7,400,000. The evidence shows that the sole change in the property between the first sale and the second sale was the lease of the property to U.S. Bank. It was the existence of this lease that accounted for the \$2,500,000 change in value. The lease that drove the second sale was placed on the property after the first sale price was negotiated and prior to the tax lien date of January 1, 2004.

The sale of the property in the first quarter of 2004 was the only sale that took into consideration the lease with U.S. Bank. It was an arm's-length sale between a willing buyer and seller and that sale price should have been accepted as the true value of the property.

There is nothing in the record which questions the arm's-length nature of the purchase by HIN, LLC. No one from HIN, LLC appeared before either the board of revision or the BTA, and it was undisputed that it paid \$7,400,000 for the property. As noted by the court in *AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision*, 119 Ohio St.3d 563, 2008-Ohio-5203, 895 N.E.2d 830, ¶22,

[O]nce a sale price is presented that appears on its face to reflect a recent, arm's-length transaction, the opponent of using that sale price must shoulder the burden to show that the elements of a recent, arm's-length transaction were not present.

In the case at hand, not only did HIN, LLC fail to show that its purchase was not at arm's-length, it never questioned the arm's-length nature of the sale. To the contrary, John Kuhn testified that the only relationship between JBK and HIN was that JBK was the seller and HIN was the buyer. (Supp. 71 (Depo. Tr. 33, lines 1-20)).

The sale of the property in the first quarter of 2004 was negotiated after the lease to U.S. Bank came into existence. In fact the buyer was only looking to buy leased property. John Kuhn testified at his deposition that the buyer's agent approached him specifically looking for property encumbered by leases:

[A] local real estate broker named Scott Revolinski told me that he had a buyer that was involved in a 1031 Starker exchange, they were looking to buy a property, and asked me if I had any triple net lease properties that this buyer might consider.

(Supp. 67 (Depo. Tr. 17)).

The sale price was negotiated between a willing buyer and a willing seller with knowledge of the existence of the lease. This arm's-length sale of the property between a willing buyer and a willing seller set the value of the property at \$7,400,000. The BTA should have accepted this value as the

true value of the property as of the tax lien date of January 1, 2004.

B. THE DETERMINATION BY THE BTA THAT THE FOURTH QUARTER 2003 SALE PRICE OF \$4,900,000 WAS THE BEST EVIDENCE OF THE PROPERTY'S VALUE AS OF JANUARY 1, 2004 IS CONTRARY TO LAW, IS NOT SUPPORTED BY THE RECORD, AND CONSTITUTES AN ABUSE OF DISCRETION.

The BTA stated the following rational for its rejection of the \$7,400,000 sale price and acceptance of the \$4,900,000 as the best evidence of the subject property's value as of January 1, 2004:

The realty, however, is that although the sale was negotiated in September 2003, the sale did not close until late December and the deed was not recorded until December 30, 2003. Further, the lease was entered into on November 1, 2003, amended and restated on December 11, 2003, and clearly provided in both versions that any obligations under the lease were contingent upon the subject sale closing. Ex. 1 at Ex. A., p. 22. Thus, while the property at the time of the first sale was not subject to an existing lease, the lease existed concurrently with the sale and arguably, the terms of the sale were negotiated with the prospective value of the lease taken into consideration. See Ex. 1 at Ex. 2, p. 2. Thus, it is our view that the amount paid for the subject property two days before the tax lien date more accurately reflected the property's value on tax lien date than the amount paid four months after tax lien date; what occurred in the market and/or in the property if the tenant made any enhancements in the intervening four months could have significantly affected the value of the subject. Ex. 1 at 11-12.

(App. 23-24).

This rational is not supported by the record.

First, the record shows that Tops Markets, LLC and U.S. Bank negotiated the \$4,900,000 sale price prior to September

8, 2003. However, Tops Markets, LLC and U.S. Bank, were not the buyer and the seller involved in the sale that was recorded on December 30, 2003. The buyer was not U.S. Bank who had negotiated the sale price but was JBK who had no input in the sale price. (Supp. 70 (Tr. 30), 80, 85).

In *Walters v. Knox County Bd. of Revision*, (1989), 47 Ohio St.3d 23, 25, 546 N.E.2d 932, this court stated the following definition of an arm's-length sale:

In its opinion below, the BTA defined it as "\* \* \* one which encompasses bidding and negotiation on the open market between a ready, willing and able buyer, and a ready, willing and able seller, both being mentally competent, and neither acting under duress or coercion." According to Black's Law Dictionary (5 Ed.1979) 100, in an arm's-length transaction "\* \* \* each [party] act[s] in his or her own self interest \* \* \*." In sum, 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.

The purchase price of \$4,900,000 which the BTA relied upon does not contain these required elements of an arm's-length transaction. The buyer JBK was not one of the parties who negotiated sale price. Consequently the \$4,900,000 sale price was not negotiated between a willing buyer and a willing seller. As a result, the BTA's acceptance of the \$4,900,000 sale price as evidence of value was in error.

Second, the record does not show that the \$4,900,000 sale was negotiated in conjunction with the lease to U.S. Bank. To the contrary, the un-refuted testimony of John Kuhn was that

the \$4,900,000 sale price was negotiated prior to JBK ever becoming involved in the transaction, and prior to there being any contemplation of a lease. (Supp. 64 (Depo. Tr. 7)). In fact, to the extent the evidence shows anything with respect to a relationship between the sale price and the lease, it was that the lease was negotiated in light of the sale and not the other way around; with the sale price set, JBK and U.S. Bank negotiated a lease. JBK's willingness to purchase the property was dependent on the lease terms not the previously negotiated sale price. JBK clearly conditioned his willingness to purchase the property on his ability to negotiate agreeable lease terms with U.S. Bank.

Third, by finding that "arguably, the terms of the sale were negotiated with the prospective value of the lease taken into consideration" (App. 24), the BTA speculated as to what happened when there was no evidence to support this speculation. The evidence clearly established that the sale price was negotiated between U.S. Bank and Tops Markets, LLC when U.S. Bank anticipated purchasing the property and before it ever considered leasing the property. Once U.S. Bank sought to lease the property the sale price was never changed. The lease had no impact on the sale price. The sale price impacted the terms of the lease.

Fourth, the BTA's speculation that the difference between the two sale prices resulted from changes to the property or the market in the intervening period other than the signing of the lease is completely contradicted by the record. Contrary to the BTA's suggestion, John Kuhn testified that the only change between when his company, JBK, purchased the property and when it sold it, was the lease to U.S. Bank. (Supp. 70 (Depo. Tr. 27)). There was no testimony from any other witness to refute Mr. Kuhn's testimony.<sup>2</sup> In fact, at any earlier place in its decision the BTA acknowledge the same:

In discussing the foregoing transactions, Mr. Kuhn indicated that between the time of his company's purchase of the property in December 2003 and the time his company sold it in April of 2004 there were no physical changes made to the property. The only difference in the property was the presence of the lease at the time of the April 2004 sale. Ex. 1 at 27.

(App. 19).

There was no testimony that there were any changes to the property or the market other than the signing of the lease. The BTA's speculation that the market value of the building increased after the tax lien date due to changes in the market or the property is pure speculation, contrary to the record and constitutes an abuse of discretion.

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<sup>2</sup>Even Mr. Ritley agreed that there had been at most minimal changes to the property, stating "[t]hat tenant didn't do anything to the interior of the property except for what appears to be two partitions in a 78,500 square foot building . . ." (Supp. 41 (Tr. 46, lines 20-23)).

Fifth under the particular facts of this case the BTA incorrectly looked to the recording dates of the deeds of the two sales rather than when the sales price was negotiated to determine that the sale price of the 2003 sale more closely reflected the value of the property as of the tax lien date of January 1, 2004 than did the 2004 sale. The recording of deeds gives public notice of a transaction that has already occurred. Indeed, property can be sold and transferred without recording deeds and sometimes buyers and sellers will delay the recording of a deed to keep the sale confidential. Consequently, the recording date of a deed does not accurately reflect when a sale occurred or when a sale price was negotiated.

The use of the sales price in an arm's-length sale between a willing buyer and a willing seller to determine true value for tax purposes is based on a recognition that the negotiations between a willing buyer and a willing seller acting in their own self interest will more accurately determine the true market value of the property than any other process. Consequently the critical time in this process is when the buyer and seller arrived at the sales price not when they record a deed that gives public notice of a transaction that has already occurred.

As was discussed above, the 2003 sale price of \$4,900,000 was negotiated and finalized prior to September 8, 2003 and before the lease to U.S. Bank was even contemplated. The sale price was already negotiated and settled by early September, 2003, almost four months prior to January 1, 2004.

In contrast, the 2004 sale price resulted from an offer in January of 2004 to purchase the subject property, as leased to U.S. Bank, for \$7,400,000. (Supp. 67 (Depo. Tr. 17)). This was less than one month from the tax lien date and clearly closer in time than the September 2003 sale price negotiations. This offer was formally accepted by JBK on April 1, 2004. (Supp. 205). Again, this was closer in time to January 1, 2004 than when U.S. Bank and Tops Markets, LLC negotiated the first sale price. The sale price which was closer in time to the tax lien date was the sale in 2004. It is this price which should have been used to set the value of the property.

A further error in the BTA's approach to value is seen in the internal inconsistency of its opinion. The BTA held that the 2003 sale of the property including the adjacent 2.3911 acres of land was the best indicator of value of the property as of the tax lien date. However, the property before the BTA did not include the adjacent 2.3911 acres. Consequently the BTA subtracted from the sale price of \$4,900,000 the sum of

\$110,000 which the BTA found to be the value of the 2.3911 acres of adjacent land. In finding that the 2.3911 acres of adjacent land was worth \$110,000 the BTA relied on the 2004 sale of both parcels of property. The BTA does not act consistently when it holds that the 2004 sale price does not reflect the value of the subject property as of January 1, 2004 but holds that the same sale accurately reflects the value of the 2.3911 acres of adjacent land.

The BOE is aware the BTA has wide discretion with respect to factual determinations. *Wolf v. Bd. of Rev. of Cuyahoga County* (1984), 11 Ohio St.3d 205, 207, 465 N.E.2d 50. However, this discretion is not without limits and the BTA will be reversed when its decision is inconsistent or not based on the evidence in the record. *Higbee v. Cuyahoga Cty. Bd. of Revision* 107 Ohio St.3d 325, 2006-Ohio-2, 839 N.E.2d 385, ¶40; *Board of Education of Mentor Exempted Village School District v. Cuyahoga Cty. Bd. of Revision* (1998), 37 Ohio St.3d 318, 526 N.E.2d 64. The BOE submits this to be the situation in the case at hand. The decision by the BTA was both inconsistent and not based on the evidence before it, and in fact appears to be based on what could have been in the record but was not. As a result, the BOE submits the decision by the BTA was unreasonably, unlawful and contrary to law and should be reversed.

C. THE BTA ERRED BY FAILING TO ORDER THE \$7,400,000 SALE PRICE CARRIED FORWARD TO SUBSEQUENT TAX YEARS UNTIL THE INITIAL COMPLAINT WAS RESOLVED.

HIN, LLC filed its complaint in March of 2005 contesting the taxable value of the subject property for tax year 2004, the second year in the triennial period. (Supp. 5). Section 5715.19(D) governs the situation where a complaint is not resolved before the start of the next tax year. Section 5715.19(D) of the Revised Codes states:

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.

The BTA did not reject the \$7,400,000 sale to HIN, LLC because it was not at arm's-length, nor reject it for being too remote in time. Instead, it stated:

[G]enerally, where a property is the subject of multiple transfers, the sale closest to the tax lien date is considered to be the better indication of value. See, e.g., *Dublin-Sawmill Properties v. Franklin Cty. Bd. of Revision* (1993, 67 Ohio St.3d 575; *Ballantrae Investments, LLC v. Hamilton Cty. Bd. of Revision* (Aug. 12, 2008), BTA No. 2006-H-2152, unreported; *Williams v. Columbiana Cty. Bd. of Revision* (Apr. 4, 1997), BTA No. 1996-M-644, unreported, at 4 ("[T]his Board has, in the past, held that when a property transfers more than once during the same triennial period, the sale closest to the tax lien date is considered the better indication of value as of the tax lien date. \*\*\* This rule applies regardless if the subsequent sale is for a significantly higher amount as is the case here.") . . . [T]hus, pursuant to this board's prior holdings, the sale closes to tax lien date, the December 2003 sale when the property sold for \$4,900,000, shall serve as the basis of this board's valuation determination.

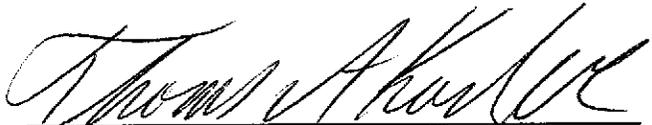
(App. 22-23).

While the BOE believes the \$7,400,000 sale is the correct indicator of the property's value as of January 1, 2004, there is still no dispute that the \$7,400,000 sale price was derived from an arm's-length sale. Nor can there be any dispute that the 2004 sale for \$7,400,000 was closer in time to the tax lien date for tax year 2005, the subsequent year in the triennial period. As a result, the BTA should have ordered the \$7,400,000 value to be the value for the tax year 2005.

CONCLUSION

For all of the reasons set forth above, the appellant, the Bedford Board of Education, submits that the decision of the BTA was not supported by the record and was contrary to Ohio law. The appellant further submits that the evidence clearly established that the value of the property, as it existed as of the tax lien date of January 1, 2004, was the \$7,400,000 purchase price of the sale which occurred in the first quarter of 2004. Finally, the appellant submits that the \$7,400,000 sale price should be used to set the value of the property for the tax year 2005.

Respectfully submitted;



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Counsel for Appellant,  
Bedford Board of Education

# APPENDIX

IN THE SUPREME COURT OF OHIO

RECEIVED

DEC 20 2006

HIN, LLC	)	
	)	
Appellee	)	
	)	Appeal from the Ohio
vs.	)	Board of Tax Appeals
	)	
CUYAHOGA COUNTY BOARD OF	)	Board of Tax Appeals
REVISION, CUYAHOGA COUNTY	)	Case No. 2006-A-712
AUDITOR	)	
	)	
Appellees	)	
	)	
and	)	
	)	
BEDFORD BOARD OF EDUCATION	)	
	)	
Appellant	)	

08-2408

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NOTICE OF APPEAL OF APPELLANT  
BEDFORD BOARD OF EDUCATION

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**FILED**  
DEC 18 2006  
CLERK OF COURT  
SUPREME COURT OF OHIO

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5717.03 and 5717.04)

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Notice of Appeal of Appellant

Bedford Board of Education

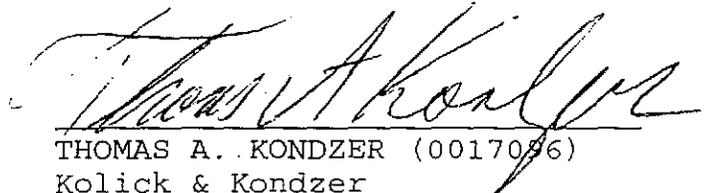
Appellant Bedford Board of Education hereby gives notice of its appeal as of right, pursuant to R.C. 5717.04, to the Supreme Court of Ohio, from a Decision and Order of the Board of Tax Appeals, journalized in case number 2006-A-712 on November 18, 2008. A true copy of the Decision and Order of the Board being appealed is attached hereto and incorporated herein by reference.

The Appellant complains of the following errors in the Decision and Order of the Board of Tax Appeals:

1. The Board of Tax Appeals erred when it rejected an April 2004 sale price of real property as the best evidence of value of the property as of the tax lien date of January 1, 2004 when the condition of the property did not change after January 1, 2004 and a lease upon which the sale price was negotiated and based was signed prior to January 1, 2004 and prior to the execution of the sales contract.
2. The Board of Tax Appeals erred when it accepted the sale price of a December 2003 transfer of a parcel of real property as the best evidence of value of the property as of the tax lien date of January 1, 2004 when the sale price of the December transfer was negotiated in September of 2003, prior to the negotiation and signing of a lease in November of 2003 which significantly increased the value of the property.
3. The Board of Tax Appeals erred by failing to find that the April, 2004 sale price of \$7,400,000 for the real property was the best evidence of value of the property as of January 1, 2004.
4. The Board of Tax Appeals erred in rejecting the April of 2004 sale price as the best evidence of the property's value as of the tax lien date of January 1, 2004 because of alleged changes in the market and improvements to the property after the tax lien date when the evidence established no such improvements or market changes.

5. The Board of Tax Appeals erred in finding that the December 2003 sale price was negotiated considering the value of the long term lease.
6. The Board of Tax Appeals erred when it found a value for tax year 2004 that was not supported by reliable and credible evidence.
7. The Board of Tax Appeals erred by issuing a final conclusion of value not supported by the evidence.
8. The Board of Tax Appeals erred by failing to comply with the ruling of the Ohio Supreme Court in *Berea City School Dist. Bd. of Education v. Cty. Bd. of Revision*, 106, Ohio St.3d 269, 2005-Ohio-4979, 834 N.E.2d 782, and its progeny.
9. The Board of Tax Appeals erred by acting contrary to law and its decision and order constitute an abuse of discretion.
10. The decision of the Board of Tax Appeals is unreasonable and unlawful.

Respectfully submitted,



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decision of the Cuyahoga County Board of Revision. In said decision, the board of revision determined the taxable value of the subject property for tax year 2004.

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, the record of the hearing before this board, and the briefs submitted by counsel to the appellant and appellee board of education.

First, in reviewing how this case came to us, we note that in March 2005, the property owner filed an original complaint against the valuation of real property with the Cuyahoga County Board of Revision seeking a decrease in the subject's total true value to \$5,000,000 for tax year 2004. S.T., Ex. A. Thereafter, in May 2005, the Bedford Board of Education ("BOE") filed a counter-complaint. S.T., Ex. B. On May 18, 2006, the BOR issued its decision for tax year 2004, maintaining the auditor's valuation of the subject. Thereafter, the appellant, HIN, LLC ("HIN"), appealed the BOR's determination to us.

Situated on approximately thirty-five acres, the subject real property, a 2-story, 78,500-square foot office building built in 1993, is located in the Bedford City School District taxing district. The value of the subject parcel, #812-16-005, as determined by the auditor and retained by the board of revision, is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$3,793,400	\$1,327,700
Building	4,055,000	1,419,300
Total	\$7,848,400	\$2,747,000

Appellant contends that the auditor and the board of revision have overvalued the property in question by not assessing it based upon the \$4,900,000 price obtained in the sale of the subject in December 2003 and its supporting appraisal. The board of education contends that a second sale of the subject in April 2004 for \$7,400,000 is more reflective of the subject's value and should have been utilized in the determination of value for the subject.

Specifically, with regard to the first sale, US Bank originally sought to purchase the subject property and entered into a purchase contract with Tops Markets, LLC, the previous owner. Ultimately, US Bank determined that it only wanted to lease the subject, and it approached John B. Kuhn, a real estate developer, to see if his company, JBK Properties, Inc., would be interested in purchasing the subject and then renting it to the bank, along with a 20,000-square foot storage building to be built by JBK adjacent to the office building. Ex. 1 at 4-7. US Bank then assigned its previously negotiated purchase contract to JBK, and pursuant to the purchase agreement between JBK and Tops, the agreed-upon purchase price was \$4,900,000 for the approximate 36-acre parcel where the subject is located which, at the time, included two acres that would ultimately be split off, at closing, for the construction of the storage building. Ex. 1 at 9-10; Ex. 1 at Exs. 1-3. The sale was made contingent upon the execution of the lease with US Bank for the office building and the storage building to be built and the provision of incentives from the city of Bedford, Ohio, including annual job grant payments and payment for moving expenses. Ex. 1 at 6-8, 26. Ultimately, US Bank determined that it wanted to terminate the lease for the storage building before it was

ever built. Ex. 1 at 37. As a result, the lease for the office building was amended/restated and the office lease payments were increased. Ex. 1 at 13-16. Under the 15-year lease (with the option of two 5-year extensions), JBK [Cuyahoga Holdings, LLC, a limited liability company created for this project] also agreed to pay US Bank a \$739,470 tenant allowance. Ex. 1 at 11 and Ex. 4. The \$4,900,000 sale of the subject property closed on December 30, 2003. Ex. 1 at Exs. 6,7.

With regard to the second sale, JBK Cuyahoga Holdings, LLC was approached by a real estate broker who had a buyer that was involved in a 1031 exchange that was looking to buy a property. JBK entered into a purchase contract with Hannah Neumann [HIN, LLC] to purchase the subject property for \$7,400,000 and the adjacent property for \$110,000. Ex. 1 at 17-20. The sale closed on April 30, 2004. Ex. 1 at Exs. 9, 10.<sup>1</sup>

In discussing the foregoing transactions, Mr. Kuhn indicated that between the time of his company's purchase of the property in December 2003 and the time his company sold it in April of 2004 there were no physical changes made to the property. The only difference in the property was the presence of the lease at the time of the April 2004 sale. Ex. 1 at 27.

We begin our analysis herein by noting that a party who asserts a right to an increase or decrease in the value of real property has the burden to prove the right to the value asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68

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<sup>1</sup> Mr. Kuhn, who testified about the sales in question via deposition, indicated that the recorder's stamps located on the certified copies of the recorded deeds incorrectly identified pertinent information about the sales, including the sale prices, parcel numbers, and/or grantor/grantee. Ex. 1 at 22-25. Arguably, the information was inadvertently transposed between the two parcels involved in the sale.

Ohio St.3d 336; *Crow v. Cuyahoga Cty. Bd. of Revision* (1990), 50 Ohio St.3d 55; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318. Consequently, it is incumbent upon an appellant challenging the decision of a board of revision to come forward and offer evidence which demonstrates its right to the value sought. *Cleveland Bd. of Edn.*, supra; *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493. Once an appellant has presented competent and probative evidence of true value, other parties asserting a different value then have a corresponding burden of providing sufficient evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn.*, supra; *Mentor Exempted Village Bd. of Edn.*, supra.

As we consider HIN's position in this matter, we note the copies of the deeds in the record and the supporting testimony relating to the sales of the subject property. The sale documents indicate that the subject was first transferred on December 30, 2003, two days before the tax lien date in question, for \$4,900,000. The property was again transferred on April 30, 2004, some four months after tax lien date, for \$7,400,000. This board has previously held that a copy of a real property conveyance fee statement, or deed, not otherwise controverted, is competent and probative evidence of value in an arm's-length sale. See, e.g., *Bounds v. Butler Cty. Bd. of Revision* (Aug. 7, 1992), BTA No. 1990-M-838, unreported; *Clearview Bd. of Edn. v. Lorain Cty. Bd. of Revision* (May 1, 1998), BTA No. 1996-M-1192, unreported; *Princeton City School Dist. v. Butler Cty. Bd. of Revision* (May 8, 1992), BTA No. 1990-C-820, unreported (holding that once a deed or conveyance fee

statement is introduced into evidence, the opposing party must introduce sufficient evidence to overcome the presumption that arises that the sales price is the true value of the property). Counsel for the property owner contends that the first sale of the subject constitutes a valid, recent,<sup>2</sup> arm's-length sale, and, as such, the transfer price should be considered the best evidence of the value of the subject property as of January 1, 2004. We agree.

R.C. 5713.03 provides, in pertinent part, that:

“In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price \*\*\* to be the true value for taxation purposes.”

The Ohio Supreme Court has consistently held that the best evidence of true value of real property is an actual, recent, arm's-length sale. Specifically, in *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, the Supreme Court held “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. See, also, *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Hilliard City School Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio

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<sup>2</sup> In considering whether such sale can be considered recent enough to be indicative of the value of the subject, we note that the Supreme Court has recognized that a sale may be considered recent for purposes of R.C. 5713.03 even though the sale occurs months either before or after tax lien date. See *R.R.Z. Associates v. Cuyahoga Cty. Bd. of Revision* (1988), 35 Ohio St.3d 198; *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57; *W.S. Tyler Co. v. Lake Cty. Bd. of Revision* (1991), 57 Ohio St.3d 57. In this instance, the sale occurred within two days of the tax lien date in question, and, therefore, constitutes a “recent” sale.

St.3d 57; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. In *Walters v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, the court defined an arm's-length sale to be one that "encompasses bidding and negotiation in the open market between a ready, willing and able buyer, and a ready, willing and able seller, both being mentally competent, and neither acting under coercion." In short, the court found an arm's-length sale to be 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." *Id.* at 25.

In addition, generally, where a property is the subject of multiple transfers, the sale closest to the tax lien date is considered to be the better indication of value. See, e.g., *Dublin-Sawmill Properties v. Franklin Cty. Bd. of Revision* (1993), 67 Ohio St. 3d 575; *Ballantrae Investments, LLC v. Hamilton Cty. Bd. of Revision* (Aug. 12, 2008), BTA No. 2006-H-2152, unreported; *Williams v. Columbiana Cty. Bd. of Revision* (Apr. 4, 1997), BTA No. 1996-M-644, unreported, at 4 ("[T]his Board has, in the past, held that when a property transfers more than once during the same triennial period, the sale closest to the tax lien date is considered the better indication of value as of the tax lien date. \*\*\* This rule applies regardless if the subsequent sale is for a significantly higher amount as is the case here."). See, also, *Plazamill Ltd. Part. v. Franklin Cty. Bd. of Revision* (Jan. 11, 2008), BTA No. 2006-M-398, unreported; *Bd. of Edn. of Worthington City Schools v. Franklin Cty. Bd. of Revision* (Sept. 28, 2007), BTA No. 2005-K-1564, unreported. Thus, pursuant to this board's prior holdings, the

sale closest to tax lien date, the December 2003 sale when the property sold for \$4,900,000, shall serve as the basis of this board's valuation determination.

The board of education argues that the first sale cannot be relied upon as evidence of value because there is nothing in the record to establish that the sale was arm's length because the original terms of the sale were negotiated by US Bank, from which no evidence or testimony regarding such sale was received. We disagree. By virtue of JBK's agreement to the assignment of the purchase contract from US Bank, JBK accepted all of the terms and conditions negotiated therein as if it had negotiated them itself. Clearly, JBK was not required to accept any of the terms of the deal and could have walked away from the prospective purchase and not agreed to the assignment, including the purchase price, if it was not satisfied with it. Accordingly, without any evidence in the record to the contrary, we find that the December 30, 2003 sale was arm's length.

The BOE further argues that the purchase agreement for the first sale was entered into in September 2003, without the lease between US Bank and JBK Cuyahoga Holdings, LLC in effect. The BOE states "[b]y the end of the year, however, a long term lease had been executed by JBK and US Bank and JBK then sold the lease-encumbered property to HIN, LLC for \$7,400,000. Since the encumbrance which was the basis for the \$7,400,000 sale price was in existence as of January 1, 2004, the BOE submits that a sale price which did not encompass this encumbrance is not good evidence of value as of the relevant tax lien date." Brief at 12. The reality, however, is that although the sale was negotiated in September 2003, the sale did not

close until late December and the deed was not recorded until December 30, 2003. Further, the lease was entered into on November 1, 2003, amended and restated on December 11, 2003, and clearly provided in both versions that any obligations under the lease were contingent upon the subject sale closing. Ex. 1 at Ex. A, p. 22. Thus, while the property at the time of the first sale was not subject to an existing lease, the lease existed concurrently with the sale and arguably, the terms of the sale were negotiated with the prospective value of the lease taken into consideration. See Ex. 1 at Ex. 2, p. 2. Thus, it is our view that the amount paid for the subject property two days before the tax lien date more accurately reflected the property's value on tax lien date than the amount paid four months after tax lien date; what occurred in the market and/or in the property if the tenant made any enhancements in the intervening four months could have significantly affected the value of the subject. Ex. 1 at 11-12. See *Bd. of Edn. of Dublin Local Schools v. Franklin Cty. Bd. of Revision* (Oct. 12, 1989), Franklin App. No. 89AP-347, unreported.

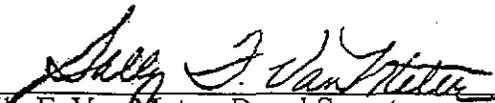
Because we find nothing in the record to dispute that the sale in question was arm's length in nature, this board finds that the best evidence of value of the subject property is its \$4,900,000 sale price paid on December 30, 2003. Accordingly, we need not consider any other evidence of value, including the property owner's appraisal or the second sale of the property. Thus, with no competent or probative evidence in the record rebutting the presumption that the December 2003 sale of the subject property constituted an arm's-length transaction, we find such sale price is the

best evidence of value of the subject parcel as of January 1, 2004. Such value shall be allocated as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$1,400,000 <sup>3</sup>	\$ 490,000
Building	3,390,000	1,186,500
Total	\$4,790,000 <sup>4</sup>	\$1,676,500

The Auditor of Cuyahoga County is hereby ordered to cause the county records to reflect the value determined herein for the subject real property and to assess the same in accordance therewith as provided by law.

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

  
Sally F. Van Meter, Board Secretary

<sup>3</sup> The board has adopted the value of the subject land, as set forth in the property owner's appraisal and which was not refuted, as the best evidence of its value. See *Polaris Amphitheater Concerts, Inc. v. Delaware Cty. Bd. of Revision*, 118 Ohio St.3d 330, 2008-Ohio-2454.

<sup>4</sup> The \$110,000 value of the approximate two acres that were split off from the primary parcel at closing in December 2003 must be deducted from the sale price for purposes of valuing the primary parcel because as of January 1, 2004, it was no longer part of the subject property. The smaller parcel's value was determined by its recent sale price in April 2004. Ex. 1 at 20-23, 23-24.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "NOTICE OF APPEAL OF APPELLANT BEDFORD BOARD OF EDUCATION" has been served upon the following this 17 day of December, 2008 by United States certified mail delivery:

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Cuyahoga County Board of  
Revision and Cuyahoga County  
Auditor

TAX COMMISSIONER OF THE  
STATE OF OHIO  
P.O. Box 530  
Columbus, Ohio 43216-0530

Appellee (pursuant to R.C.  
5717.03 and 5717.04)

NANCY H. ROGERS  
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Counsel for Appellee,  
Tax Commissioner of the State  
of Ohio (pursuant to R.C.  
5717.03 and 5717.04)



THOMAS A. KONDZER  
Counsel for Appellant,  
Bedford Board of Education

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NOV 20 2008

**OHIO BOARD OF TAX APPEALS**

HIN, LLC, )  
 )  
 Appellant, )  
 )  
 vs. )  
 )  
 Cuyahoga County Board of Revision, )  
 Cuyahoga County Auditor, and Bedford )  
 Board of Education, )  
 )  
 Appellees. )  
 )

CASE NO. 2006-A-712  
  
(REAL PROPERTY TAX)  
  
DECISION AND ORDER

**APPEARANCES:**

For the Appellant - Siegel Siegel Johnson & Jennings Co., LPA  
Jay P. Siegel  
25700 Science Park Drive, Suite 210  
Cleveland, Ohio 44122

For the County Appellees - William D. Mason  
Cuyahoga County Prosecuting Attorney  
Timothy J. Kollin  
Assistant Prosecuting Attorney  
Courts Tower, 8<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

For the Appellee Ed. of Edn. - Kolick & Kondzer  
John P. Desimone  
24500 Center Ridge Road, #175  
Westlake, Ohio 44145

Entered **NOV 18 2008**

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

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decision of the Cuyahoga County Board of Revision. In said decision, the board of revision determined the taxable value of the subject property for tax year 2004.

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, the record of the hearing before this board, and the briefs submitted by counsel to the appellant and appellee board of education.

First, in reviewing how this case came to us, we note that in March 2005, the property owner filed an original complaint against the valuation of real property with the Cuyahoga County Board of Revision seeking a decrease in the subject's total true value to \$5,000,000 for tax year 2004. S.T., Ex. A. Thereafter, in May 2005, the Bedford Board of Education ("BOE") filed a counter-complaint. S.T., Ex. B. On May 18, 2006, the BOR issued its decision for tax year 2004, maintaining the auditor's valuation of the subject. Thereafter, the appellant, HIN, LLC ("HIN"), appealed the BOR's determination to us.

Situated on approximately thirty-five acres, the subject real property, a 2-story, 78,500-square foot office building built in 1993, is located in the Bedford City School District taxing district. The value of the subject parcel, #812-16-005, as determined by the auditor and retained by the board of revision, is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$3,793,400	\$1,327,700
Building	4,055,000	1,419,300
Total	\$7,848,400	\$2,747,000

Appellant contends that the auditor and the board of revision have overvalued the property in question by not assessing it based upon the \$4,900,000 price obtained in the sale of the subject in December 2003 and its supporting appraisal. The board of education contends that a second sale of the subject in April 2004 for \$7,400,000 is more reflective of the subject's value and should have been utilized in the determination of value for the subject.

Specifically, with regard to the first sale, US Bank originally sought to purchase the subject property and entered into a purchase contract with Tops Markets, LLC, the previous owner. Ultimately, US Bank determined that it only wanted to lease the subject, and it approached John B. Kuhn, a real estate developer, to see if his company, JBK Properties, Inc., would be interested in purchasing the subject and then renting it to the bank, along with a 20,000-square foot storage building to be built by JBK adjacent to the office building. Ex. 1 at 4-7. US Bank then assigned its previously negotiated purchase contract to JBK, and pursuant to the purchase agreement between JBK and Tops, the agreed-upon purchase price was \$4,900,000 for the approximate 36-acre parcel where the subject is located which, at the time, included two acres that would ultimately be split off, at closing, for the construction of the storage building. Ex. 1 at 9-10; Ex. 1 at Exs. 1-3. The sale was made contingent upon the execution of the lease with US Bank for the office building and the storage building to be built and the provision of incentives from the city of Bedford, Ohio, including annual job grant payments and payment for moving expenses. Ex. 1 at 6-8, 26. Ultimately, US Bank determined that it wanted to terminate the lease for the storage building before it was

ever built. Ex. 1 at 37. As a result, the lease for the office building was amended/restated and the office lease payments were increased. Ex. 1 at 13-16. Under the 15-year lease (with the option of two 5-year extensions), JBK [Cuyahoga Holdings, LLC, a limited liability company created for this project] also agreed to pay US Bank a \$739,470 tenant allowance. Ex. 1 at 11 and Ex. 4. The \$4,900,000 sale of the subject property closed on December 30, 2003. Ex. 1 at Exs. 6,7.

With regard to the second sale, JBK Cuyahoga Holdings, LLC was approached by a real estate broker who had a buyer that was involved in a 1031 exchange that was looking to buy a property. JBK entered into a purchase contract with Hannah Neumann [HIN, LLC] to purchase the subject property for \$7,400,000 and the adjacent property for \$110,000. Ex. 1 at 17-20. The sale closed on April 30, 2004. Ex. 1 at Exs. 9, 10.<sup>1</sup>

In discussing the foregoing transactions, Mr. Kuhn indicated that between the time of his company's purchase of the property in December 2003 and the time his company sold it in April of 2004 there were no physical changes made to the property. The only difference in the property was the presence of the lease at the time of the April 2004 sale. Ex. 1 at 27.

We begin our analysis herein by noting that a party who asserts a right to an increase or decrease in the value of real property has the burden to prove the right to the value asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68

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<sup>1</sup> Mr. Kuhn, who testified about the sales in question via deposition, indicated that the recorder's stamps located on the certified copies of the recorded deeds incorrectly identified pertinent information about the sales, including the sale prices, parcel numbers, and/or grantor/grantee. Ex. 1 at 22-25. Arguably, the information was inadvertently transposed between the two parcels involved in the sale.

Ohio St.3d 336; *Crow v. Cuyahoga Cty. Bd. of Revision* (1990), 50 Ohio St.3d 55; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318. Consequently, it is incumbent upon an appellant challenging the decision of a board of revision to come forward and offer evidence which demonstrates its right to the value sought. *Cleveland Bd. of Edn.*, supra; *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493. Once an appellant has presented competent and probative evidence of true value, other parties asserting a different value then have a corresponding burden of providing sufficient evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn.*, supra; *Mentor Exempted Village Bd. of Edn.*, supra.

As we consider HIN's position in this matter, we note the copies of the deeds in the record and the supporting testimony relating to the sales of the subject property. The sale documents indicate that the subject was first transferred on December 30, 2003, two days before the tax lien date in question, for \$4,900,000. The property was again transferred on April 30, 2004, some four months after tax lien date, for \$7,400,000. This board has previously held that a copy of a real property conveyance fee statement, or deed, not otherwise controverted, is competent and probative evidence of value in an arm's-length sale. See, e.g., *Bounds v. Butler Cty. Bd. of Revision* (Aug. 7, 1992), BTA No. 1990-M-838, unreported; *Clearview Bd. of Edn. v. Lorain Cty. Bd. of Revision* (May 1, 1998), BTA No. 1996-M-1192, unreported; *Princeton City School Dist. v. Butler Cty. Bd. of Revision* (May 8, 1992), BTA No. 1990-C-820, unreported (holding that once a deed or conveyance fee

statement is introduced into evidence, the opposing party must introduce sufficient evidence to overcome the presumption that arises that the sales price is the true value of the property). Counsel for the property owner contends that the first sale of the subject constitutes a valid, recent,<sup>2</sup> arm's-length sale, and, as such, the transfer price should be considered the best evidence of the value of the subject property as of January 1, 2004. We agree.

R.C. 5713.03 provides, in pertinent part, that:

“In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price \*\*\* to be the true value for taxation purposes.”

The Ohio Supreme Court has consistently held that the best evidence of true value of real property is an actual, recent, arm's-length sale. Specifically, in *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, the Supreme Court held “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. See, also, *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604; *Hilliard City School Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio

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<sup>2</sup> In considering whether such sale can be considered recent enough to be indicative of the value of the subject, we note that the Supreme Court has recognized that a sale may be considered recent for purposes of R.C. 5713.03 even though the sale occurs months either before or after tax lien date. See *R.R.Z. Associates v. Cuyahoga Cty. Bd. of Revision* (1988), 35 Ohio St.3d 198; *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57; *W.S. Tyler Co. v. Lake Cty. Bd. of Revision* (1991), 57 Ohio St.3d 57. In this instance, the sale occurred within two days of the tax lien date in question, and, therefore, constitutes a “recent” sale.

St.3d 57; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. In *Walters v. Knox Cty. Bd. of Revision* (1989), 47 Ohio St.3d 23, the court defined an arm's-length sale to be one that "encompasses bidding and negotiation in the open market between a ready, willing and able buyer, and a ready, willing and able seller, both being mentally competent, and neither acting under coercion." In short, the court found an arm's-length sale to be 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." *Id.* at 25.

In addition, generally, where a property is the subject of multiple transfers, the sale closest to the tax lien date is considered to be the better indication of value. See, e.g., *Dublin-Sawmill Properties v. Franklin Cty. Bd. of Revision* (1993), 67 Ohio St. 3d 575; *Ballantrae Investments, LLC v. Hamilton Cty. Bd. of Revision* (Aug. 12, 2008), BTA No. 2006-H-2152, unreported; *Williams v. Columbiana Cty. Bd. of Revision* (Apr. 4, 1997), BTA No. 1996-M-644, unreported, at 4 ("[T]his Board has, in the past, held that when a property transfers more than once during the same triennial period, the sale closest to the tax lien date is considered the better indication of value as of the tax lien date. \*\*\* This rule applies regardless if the subsequent sale is for a significantly higher amount as is the case here."). See, also, *Plazamill Ltd. Part. v. Franklin Cty. Bd. of Revision* (Jan. 11, 2008), BTA No. 2006-M-398, unreported; *Bd. of Edn. of Worthington City Schools v. Franklin Cty. Bd. of Revision* (Sept. 28, 2007), BTA No. 2005-K-1564, unreported. Thus, pursuant to this board's prior holdings, the

sale closest to tax lien date, the December 2003 sale when the property sold for \$4,900,000, shall serve as the basis of this board's valuation determination.

The board of education argues that the first sale cannot be relied upon as evidence of value because there is nothing in the record to establish that the sale was arm's length because the original terms of the sale were negotiated by US Bank, from which no evidence or testimony regarding such sale was received. We disagree. By virtue of JBK's agreement to the assignment of the purchase contract from US Bank, JBK accepted all of the terms and conditions negotiated therein as if it had negotiated them itself. Clearly, JBK was not required to accept any of the terms of the deal and could have walked away from the prospective purchase and not agreed to the assignment, including the purchase price, if it was not satisfied with it. Accordingly, without any evidence in the record to the contrary, we find that the December 30, 2003 sale was arm's length.

The BOE further argues that the purchase agreement for the first sale was entered into in September 2003, without the lease between US Bank and JBK Cuyahoga Holdings, LLC in effect. The BOE states "[b]y the end of the year, however, a long term lease had been executed by JBK and US Bank and JBK then sold the lease-encumbered property to HIN, LLC for \$7,400,000. Since the encumbrance which was the basis for the \$7,400,000 sale price was in existence as of January 1, 2004, the BOE submits that a sale price which did not encompass this encumbrance is not good evidence of value as of the relevant tax lien date." Brief at 12. The reality, however, is that although the sale was negotiated in September 2003, the sale did not

close until late December and the deed was not recorded until December 30, 2003. Further, the lease was entered into on November 1, 2003, amended and restated on December 11, 2003, and clearly provided in both versions that any obligations under the lease were contingent upon the subject sale closing. Ex. 1 at Ex. A, p. 22. Thus, while the property at the time of the first sale was not subject to an existing lease, the lease existed concurrently with the sale and arguably, the terms of the sale were negotiated with the prospective value of the lease taken into consideration. See Ex. 1 at Ex. 2, p. 2. Thus, it is our view that the amount paid for the subject property two days before the tax lien date more accurately reflected the property's value on tax lien date than the amount paid four months after tax lien date; what occurred in the market and/or in the property if the tenant made any enhancements in the intervening four months could have significantly affected the value of the subject. Ex. 1 at 11-12. See *Bd. of Edn. of Dublin Local Schools v. Franklin Cty. Bd. of Revision* (Oct. 12, 1989), Franklin App. No. 89AP-347, unreported.

Because we find nothing in the record to dispute that the sale in question was arm's length in nature, this board finds that the best evidence of value of the subject property is its \$4,900,000 sale price paid on December 30, 2003. Accordingly, we need not consider any other evidence of value, including the property owner's appraisal or the second sale of the property. Thus, with no competent or probative evidence in the record rebutting the presumption that the December 2003 sale of the subject property constituted an arm's-length transaction, we find such sale price is the

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best evidence of value of the subject parcel as of January 1, 2004. Such value shall be allocated as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$1,400,000 <sup>3</sup>	\$ 490,000
Building	3,390,000	1,186,500
Total	\$4,790,000 <sup>4</sup>	\$1,676,500

The Auditor of Cuyahoga County is hereby ordered to cause the county records to reflect the value determined herein for the subject real property and to assess the same in accordance therewith as provided by law.

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

  
Sally F. Van Meter, Board Secretary

<sup>3</sup> The board has adopted the value of the subject land, as set forth in the property owner's appraisal and which was not refuted, as the best evidence of its value. See *Polaris Amphitheater Concerts, Inc. v. Delaware Cty. Bd. of Revision*, 118 Ohio St.3d 330, 2008-Ohio-2454.

<sup>4</sup> The \$110,000 value of the approximate two acres that were split off from the primary parcel at closing in December 2003 must be deducted from the sale price for purposes of valuing the primary parcel because as of January 1, 2004, it was no longer part of the subject property. The smaller parcel's value was determined by its recent sale price in April 2004. Ex. 1 at 20-23, 23-24.

# County of Cuyahoga

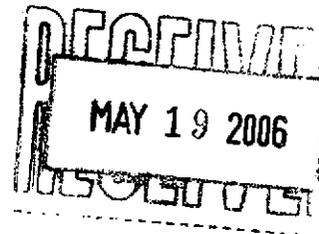
## BOARD OF REVISION

County Administration Building

1219 Ontario Street, Room 232

Cleveland, Ohio 44113

(216) 443-7195 / Ohio Relay Service 711



Facsimile: (216) 443-8282

Email: 2004resbor@cuyahogacounty.us

**Commissioner**  
**Jimmy Dimora**

**Auditor**  
**Frank Russo**  
May 18, 2006

**Treasurer**  
**James Rokakis**  
05-315

Complaint No. 200503310532  
HIN, LLC  
C/O Ann Hansen IDS  
80 South Street, #850  
Minneapolis, MN 55402

Complaint No. 200505270187  
Bedford City School District  
Board of Education  
475 Northfield Road  
Bedford, Ohio 44146

Re: Parcel No. 812-16-005  
Journal No. 105A

Dear Complainants:

I am writing to inform you that upon consideration of the evidence and testimony presented at your oral hearing, the Board of Revision found the market value of the property to be \$7,848,400. Thus, there is neither a reduction nor an increase granted on the above parcel for the tax year 2004. As Administrator of the Board of Revision, it is my duty to inform you of their action.

In order to assure your right to pursue this complaint further, you may appeal this decision directly to the Court of Common Pleas of Cuyahoga County pursuant to Section 5717.05 or the Ohio Board of Tax Appeals under provisions of Section 5717.01 of the Ohio Revised Code within 30 days after date of mailing of this letter.

If you have any questions, please call the Board of Revision at (216) 443-7195.

Respectfully,

Robert M. Chambers, Administrator  
Cuyahoga County Board of Revision

RMC:pmb

CERTIFIED MAIL

cc: Siegel, Siegel, Johnson & Jennings, Co.  
Thomas A. Kondzer, Kolick & Kondzer

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▷

Baldwin's Ohio Revised Code Annotated Currentness

Title LVII. Taxation

▣ Chapter 5715. Boards of Revision; Equalization of Assessments (Refs & Annos)

▣ Practice and Procedure

→ **5715.19 Complaints; tender of tax or lesser amount; penalties; common level of assessment to be determined**

(A) As used in this section, "member" has the same meaning as in section 1705.01 of the Revised Code.

(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;

(f) Any determination made under division (A) of section 319.302 of the Revised Code.

Any person owning taxable real property in the county or in a taxing district with territory in the county; such 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 tendered, 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.

CREDIT(S)

(2006 H 294, eff. 9-28-06; 2002 H 390, eff. 3-4-02; 1998 H 694, eff. 3-30-99; 1988 H 603, eff. 6-24-88; 1984 H 379; 1983 H 260; 1982 H 379; 1981 S 6; 1980 H 736, H 1238; 1978 H 648; 1977 H 1; 1976 H 920; 1974 S 423; 1971 S 428, H 931; 131 v H 337; 129 v 582; 128 v 410; 127 v 65; 1953 H 1; GC 5609)

Current through 2009 File 1 of the 128th GA (2009-2010), apv. by 5/26/09 and filed with the

Secretary of State by 5/26/09.

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END OF DOCUMENT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Brief of Appellant, Bedford Board of Education" has been served upon the following this 4 day of June, 2009 by ordinary U.S. mail delivery:

JAY P. SIEGEL  
Counsel of Record  
Siegel Siegel Johnson &  
Jennings Co., LPA  
25700 Science Park Drive,  
#210  
Cleveland, Ohio 44122

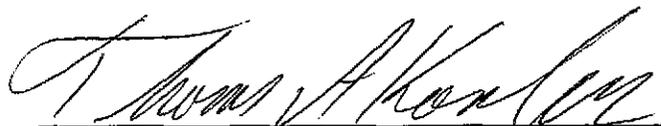
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HIN, LLC

TIMOTHY J. KOLLIN  
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Attorney  
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Cuyahoga County Board of  
Revision and Cuyahoga County  
Auditor

RICHARD CORDRAY  
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