

IN THE SUPREME COURT OF OHIO

ORIGINAL

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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REPLY BRIEF OF APPELLANT,  
 BEDFORD BOARD OF EDUCATION

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THOMAS A. KONDZER (0017096)  
 Counsel of Record  
 Kolick & Kondzer  
 JOHN P. DESIMONE (0062330)  
 24500 Center Ridge Road, #175  
 Westlake, Ohio 44145-5628  
 (440)835-1200  
 (440)835-5878 - Facsimile

Counsel for Appellant,  
 Bedford Board of Education

JAY P. SIEGEL (0067701)  
 Counsel of Record  
 NICHOLAS RAY (0068664)  
 Siegel Siegel Johnson &  
 Jennings Co., LPA  
 25700 Science Park Drive, #210  
 Cleveland, Ohio 44122  
 (216)763-1004  
 (216)763-1016 - Facsimile

Counsel for Appellee,  
 HIN, LLC

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TIMOTHY J. KOLLIN (0030062)  
Assistant Prosecuting Attorney  
Counsel of Record

WILLIAM MASON (0037540)  
Cuyahoga County Prosecuting  
Attorney

Courts Tower - Eighth Floor  
1200 Ontario Street  
Cleveland, Ohio 44113  
(216)443-7795  
(216)443-7602 - Facsimile

Counsel for Appellees,  
Cuyahoga County Board of  
Revision and Cuyahoga County  
Auditor

RICHARD CORDRAY (0038034)  
Ohio Attorney General  
Counsel of Record  
State Office Tower, 17<sup>th</sup> Floor  
30 East Broad Street  
Columbus, Ohio 43215-3428  
(614)466-4320  
(614)466-8226 - Facsimile

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

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REPLY TO APPELLEE'S STATEMENT OF CASE AND FACTS

The question before the court is which of two sales of a parcel of property constitutes the best evidence of the property's value for real estate tax purposes as of January 1, 2004 and subsequent years.

The first sale was between Tops Market, LLC and JBK Cuyahoga Holdings LLC. This sale was negotiated between the buyer and seller and a binding contract of sale was signed on September 24, 2003 (buyer) and September 29, 2003 (seller). (Appellant's Supplement to the Brief ("Supp."), 96) Although the sale price was agreed to in September, 2003, the transfer of the property was not recorded until December 30, 2003. (Supp. 188)

Subsequent to the first sale and prior to the tax lien date, the property which was the subject of the first sale underwent two significant changes: 2.3911 acres of land was removed from the parcel and the subject parcel was leased to U.S. Bank.

The property as it existed on the tax lien date was sold by JBK to HIN, LLC for \$7,400,000. This sale price was negotiated and the buyer and seller signed a binding sale contract on April 1, 2004. (Supp. 205) The transfer of the property was recorded on April 30, 2004. (Supp. 217)

The BTA relied on the September, 2003 sale as the sale most reflective of the property's value as of the tax lien date. This was error for two reasons. First, the September, 2003 sale was

not a sale of the property as it existed on the tax lien date. The September, 2003 sale was made prior to the split-off of the 2.3911 acres from the property and prior to the signing of the lease to U.S. Bank. On the tax lien date, January 1, 2004, the 2.3911 acres had been split off from the parcel and the property had been benefitted by the signing of the U.S. Bank lease. The April, 2004 sale was the only sale of the property as it existed on the tax lien date, being after the 2.3911 acres was split from the property, and after the U.S. Bank lease was in effect.

Second, the April, 2004 sale was more reflective of the value of the property as of the tax lien date because the sale price was negotiated and agreed to between the buyer and seller closer in time to the tax lien date than was the September, 2003 sale price.

In support of its contention that the September, 2003 sale price should set the value of the property as of the tax lien date, HIN asserts that "the fee simple real estate did not change in any way over the intervening four months between the two sales." (Page 2, paragraph 1, Brief of Appellee) To the extent that HIN is stating that there was no physical change to the building, the BOE agrees. However, the record establishes that during the period between the two sales, and prior to the January 1, 2004 valuation date, US Bank executed a fifteen year lease for the property and 2.3911 acres of land was split off from the

property. (Supp. 152, 188-191, 192-196) Both of these were changes to the property which occurred after the September, 2003 sale and prior to the tax lien date. Both of these changes affected the value of the property.

Second, HIN states that it introduced appraisal testimony at the hearing before the BTA, and this evidence supported the September, 2003 sale price of \$4,900,000. (Page 3, paragraph 1, Brief of Appellee) However, the BTA rejected both the appraiser's testimony and his report. (Appendix to Brief of Appellant, page 24) As no party has raised this rejection as an assignment of error, it must be conceded that the BTA properly rejected the appraisal evidence. Consequently, the appraisal evidence cannot be used to support the proposed value of the property.

#### LAW AND ARGUMENT

##### Reply to Appellee's Proposition of Law Number 1:

The best evidence of value of a parcel of property for real estate tax purposes is a recent arm's length sale of the property.

HIN states in its first proposition of law that "[t]he best evidence of value is a recent arm's length sale of the subject property." (Page 3, Brief of Appellee)

The BOE agrees that a recent arm's length sale of the property as it existed on the tax lien date is the best evidence of value of the property. This proposition of law is not in

dispute. The issue is which of the two sales of the subject property best reflect the value of the property as of the tax lien date. The April, 2004 sale best reflects the value of the property as of the tax lien date because it is the only sale of the property as the property existed on the tax lien date and its sale price was determined closer in time to the tax lien date than was the September, 2003 sale price.

Reply to Appellee's Proposition of Law Number 2:

A recent arm's length sale of a fee simple interest in real property that is subject to a lease is the best evidence of value of the property for real estate tax assessment.

HIN argues in its second proposition of law that the April 2004 sale of the subject property cannot be used to set the value of the property because it occurred when the property was subject to the fifteen year lease to U.S. Bank. HIN argues that because the second sale occurred when the property was subject to a lease, the sale cannot be used to determine the value of the property for real estate tax purposes without adjusting the sale price downward to reflect the value of the lease.

HIN's argument that leased property must be split into two parts, with the unencumbered fee simple being subject to tax and the leasehold interest outside the ad valorem taxation system, has been repeatedly rejected by this court. In *Meijer Stores Ltd. Partnership v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2009-Ohio-3479, the court rejected both the argument that

property should be valued independent of an encumbrance as well as the argument that the sale of a fee simple interest subject to a lease is actually the sale of a leasehold:

As recent cases have demonstrated, the possibility of encumbering a property like the one at issue here constitutes - as a purely factual matter - one method of realizing the value of legal ownership of the property. Moreover, by drawing the distinction between "fee simple" and "leased fee," Meijer predicates its argument on a legal premise that our cases have rejected.[footnote 4] We have held that a recent arm's-length sale price should not be adjusted to remove the economic effect of such encumbrances when they exist.

Footnote 4: The distinction between "fee simple" and "leased fee" is one drawn in the context of appraisal practice. The appraisal industry uses the term "fee simple" to refer to unencumbered property - or to property appraised as if it were unencumbered. This distinction is not one recognized by the law, however. A "fee simple" may be absolute, conditional, or subject to defeasance, but the mere existence of encumbrances does not affect its status as fee simple.

*Meijer Stores Ltd. Partnership* at ¶23 (citations omitted, emphasis added).

Also see, *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, 834 N.E.2d 782; *Rhodes v. Hamilton Cty. Bd. of Revision*, 117 Ohio St.3d 532, 2008-Ohio-1595, 885 N.E.2d 236.

The appellee argues that the value of a lease must be removed from the sale price of real estate before the sale price can be used to determine the property's value for real estate tax purposes. In support of this argument the appellee cites *Alliance Towers Ltd. v. Stark Cty. Bd. of Revision* (1988), 37

Ohio St.3d 16, 523 N.E.2d 826; *County of Franklin v. Lockbourne Manor, Inc.* (1958), 168 Ohio St. 286, 154 N.E.2d 147; and *Visicon, Inc. v. Tracy* (1998), 83 Ohio St.3d 211, 699 N.E.2d 89. None of these cases support the appellee's argument.

First, none of the cases involved sales of the real property. Second, the adjustment proposed in the cases were not sought because of the existence of a lease of the property. In *Alliance Towers Ltd.*<sup>1</sup> the court discussed how a government subsidy program should affect the valuation of property. In *Lockbourne Manor, Inc.* and *Visicon, Inc.* the question addressed was whether land that was owned by the United States government and leased to another party was entitled to exemption from taxation. There were no sales involved, nor even any question of valuation. In both cases the court held that Ohio does not levy a tax on a leasehold interest separate and apart from the underlying real estate and the property was entitled to tax exemption. This is plainly not the situation in the case at hand.

When property is sold in an arm's length sale the sale price determines the value of the property for real estate tax purposes

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<sup>1</sup>This court has also questioned the continued vitality of the first syllabus paragraph of *Alliance Towers, Ltd.*, supra. See, *Meijer Stores Ltd. Partnership v. Franklin Cty. Bd. of Revision*, Slip Opinion 2009-Ohio-3479, footnote 3; *Woda Ivy Glen Ltd. Partnership v. Fayette Cty. Bd. of Revision*, 121 Ohio St.3d 175, 2009-Ohio-762, 902 N.E.2d 984, at ¶22.

without adjusting the sale price to reflect the market value of leases on the property. *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.

Reply to Appellee's Proposition of Law Number 3:

When property is subject to two arm's length sales within close proximity to the tax lien date and both sales are concluded, the sale price which was negotiated and agreed upon closer in time to the tax lien date is the sale price that should set the value of the property for real estate tax purposes.

In its third proposition of law HIN argues that since the recording date of the 2003 sale for \$4,900,000 was closer in time to the January 1, 2004 tax lien date then the recording date of the 2004 sale for \$7,400,000, as a matter of law the 2003 sale constitutes the best evidence of value.<sup>2</sup>

The record reflects when the 2003 sale was recorded and when the 2004 sale was recorded. HIN argues that these two dates are the dates the sale closed; however, there is no evidence in the

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<sup>2</sup>As HIN emphasizes in its brief, the \$4,900,000 sale included 2.3911 acres of adjacent land that is not part of this case. (Brief of Appellee, footnotes 1, 4, 5, 6, 7, 8, 10, 12, 13, 14, 15, and 16) This adjacent land was moved to a separate parcel prior to the January 1, 2004 tax lien date and was not included in the \$7,400,000 sale transaction. Therefore, the 2003 sale is not even a sale of the same parcel of property that is the subject of this tax case.

record as to when the sales closed or if the sales closed prior to the recording date. HIN seems to equate the recording date and the closing date of a sale. While generally a sale of real property is recorded on the date that the sale transaction closes, that is not always true; a sale of real property can be recorded on a date different from the sale closing date.

The record reflects that there were two sales of the subject property. The first sale occurred in late 2003. This sale was between Tops Market, LLC and JBK. The terms of the sale, including the sale price, were negotiated and set in September, 2003 at which time a binding contract of sale was signed. The sale was publicly recorded on December 30, 2003. This sale was not a sale of the property as it existed on the tax lien date as it contained additional property and occurred prior to the signing of the U.S. Bank lease.

The second sale was a sale of the property as it existed on the tax lien date. The sale price was negotiated and arrived at by February 26, 2004 and a contract was signed on April 1, 2004. The sale was publicly recorded on April 30, 2004. (Supp. 204, 217)

The appellee contends that the 2003 sale should be used to set the value of the property because its recording date was closer to the tax lien date. The BOE contends that the recording

date is irrelevant. The relevant date for determining value is the date that the buyer and seller agreed upon a sale price.

The rationale for accepting the sale price of an arm's length transaction between a willing buyer and a willing seller is that these two adverse parties will consider all of the factors affecting the value of the property and are best capable of arriving at a fair market value for the property. Given this rationale, the key date in the transaction for purposes of value is the date the parties agreed upon the sale price not the recording date of the sale which can be delayed for any number of reasons unrelated to the value, such as a desire to keep the sale secret, tax considerations, delay in obtaining financing, or delay in preparing documents.

HIN would have the state ignore the date value was determined by the buyer and seller and focus solely on the recording date of the transactions.

The fallacy of focusing on the recording date of the deeds rather than the date the buyer and seller agreed upon the purchase price can be exemplified by considering a hypothetical purchase of property.

Assume in 1990 a buyer and seller enter into a binding option for the purchase of a parcel of real estate. The buyer and seller negotiate and after considering all of the factors known to them at that time agree that the fair market value of

the real estate is \$1,000,000. The option price is set at \$1,000,000, and the option can be exercised at anytime within five years. Assume further that the value of real estate increases five percent per year during those five years and the buyer exercises his option to purchase the real estate at the end of the five years. Assume further that the option is exercised on December 30, 1995, and the deed is recorded on that date. The deed will show a transfer price of \$1,000,000. However, the real estate will be worth \$1,276,000 due to the increase in property value.

The reason for this discrepancy in the value of the property versus the sale price is because the sale price was set five years prior to the recording of the deed. The sale price reflects the value of the property when the price was agreed to between the buyer and seller, and not necessarily when the deed is recorded.

Assume further that in February of 1996 a second sale is negotiated and a sale price is set at \$1,270,000. This sale is also concluded and the property transfer is recorded in March of 2006. Although the first sale was recorded closer to the tax lien date, the second sale price more accurately reflects the fair market value of the property because the sale price was negotiated closer in time to the tax lien date than was the sale price in the first sale.

HIN argues in its brief that the BOE failed to rebut the presumption that the 2003 sale is an arm's length transaction that sets the value of the property. The same argument can be applied to HIN. HIN has failed to rebut the presumption that the 2004 sale is an arm's length transaction that sets the value of the property. The BTA apparently concluded that both sales were arm's length transactions. The issue here is not whether or not the sales were arm's length but which of the two sale prices should be used to value the property for real estate tax purposes. As set forth above, the 2004 sale more accurately reflects the value of the property on the tax lien date. For real estate tax purposes property must be valued as of the relevant tax lien date and must be valued as it exists on that date.

In *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26, 29-30, 684 N.E.2d 304, this court stated:

R.C. 5715.19(D) requires that the determination of a complaint filed for a particular tax year "shall relate back to the date when the lien for taxes \* \* \* for the current year attached." R.C. 323.11 provides that the lien for real estate taxes is the first day of January. Likewise, R.C. 5715.01, which authorizes the Tax Commissioner to direct and supervise the assessment for taxation of all real property, provides that "[t]he commissioner shall neither adopt nor enforce any rule that requires true value for any tax year to be any value other than the true value in money on the tax lien date of such tax year. \* \* \*" Thus, the first day of January of the tax year in question is the crucial valuation date for tax assessment purposes. *Olmsted Falls*

*Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 552, 664 N.E.2d 922.<sup>3</sup>

The essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time. . . . (Emphasis and footnote added).

In the case at hand, the "facts as they exist[ed] at a certain point in time", i.e., as of the January 1, 2004 tax lien date, were the same as when the \$7,400,000 sale occurred, but not when the \$4,900,000 sale took place. While it may well be the case that prior to the lease of the property to U.S. Bank the subject property was worth only \$4,900,000 as reflected in the September, 2003 sale, it was also the case that once the lease was in place the property was worth \$7,400,000 as reflected in the 2004 sale. As the lease was in place prior to January 1, 2004, the BOE submits that the \$7,400,000 sale price is the best evidence of value.

Reply to Appellee's Proposition of Law Number 4:

A decision by the BTA will be reversed where its determination of the ultimate fact is not supported by either the evidence or Ohio law.

HIN argues in its fourth proposition of law that the scope of review is whether the decision by the BTA is reasonable and lawful. The appellee further argues that "if the record contains reliable and probative support, this Court will affirm." (Brief

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<sup>3</sup>In *Olmsted Falls Village Assn.* the court reversed the BTA "because the BTA based its decision on evidence that did not value the property as of the tax lien date." *Olmsted Falls Village Assn.* at 554, 664 N.E.2d 923.

of Appellee, page 11) As a matter of law, the BOE agrees with HIN's argument. However, this is not the situation in the case at hand.

In *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1997), 77 Ohio St.3d 402, 405, 674 N.E.2d 696, the court summarized the standard for review of a decision by the BTA, stating:

We will reverse BTA decisions on ultimate factual conclusions because these conclusions are legal in nature. *SFZ Transp., Inc. v. Limbach* (1993), 66 Ohio St.3d 602, 613 N.E.2d 1037; *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 552, 664 N.E.2d 922.

Consequently, we affirm the BTA's basic factual findings if sufficient, probative evidence of record supports these findings. We also affirm the BTA's rulings on credibility of witnesses and weight attributed to evidence if the BTA has exercised sound discretion in rendering these rulings. Finally, we affirm the BTA's findings on ultimate facts, i.e., factual conclusions derived from given basic facts, *Ace Steel Baling, Inc. v. Porterfield* (1969), 19 Ohio St.2d 137, 142, 48 O.O.2d 169, 171-172, 249 N.E.2d 892, 895-896, if the evidence the BTA relies on meets these above conditions, and our analysis of the evidence and reading of the statutes and case law confirm its conclusion. After meeting all these prerequisites, the BTA's decision would, thus, be reasonable and lawful, pursuant to R.C. 5717.04.

The BOE has not argued that the BTA made incorrect factual determinations; it has not argued that the BTA improperly ruled on the credibility of witnesses, nor improperly weighed the evidence. Indeed, to a large extent there has been no dispute regarding any of the underlying facts. Instead, the BOE submits that the BTA made an incorrect conclusion based on the underlying undisputed facts.

Once again, the BOE would note that it was undisputed that (1) in 2003 the subject property, along with the adjacent 2.3911 acres of vacant land but without the lease to U.S. Bank, was sold to JBK for \$4,900,000; (2) as of January 1, 2004 the property no longer included the adjacent 2.3911 acres but was subject to a fifteen year lease to U.S. Bank; and (3) in 2004 the property as it existed on the tax lien date was sold to HIN, LLC for \$7,400,000.

Based on these undisputed facts, the BTA made the ultimate factual conclusion, which is legal in nature, that the \$4,900,000 sale price was the best evidence of value as of January 1, 2004. For all of the reasons set forth in the BOE's initial brief as well as this reply, this ultimate conclusion by the BTA was not supported by the underlying facts and was not in accord with the law of Ohio.

HIN makes an additional argument in its fourth proposition of law; namely, that "Mr. Ritley's opinion of value also constituted competent, probative evidence of the value of the subject property[]", and even if both sales are good, they would then cancel each other out thereby leaving only the opinion of value stated by Mr. Ritley, the appraiser who testified before the BTA. (Brief of Appellee, page 12, paragraph 3) This argument is without merit for two reasons.

First, the BTA summarily rejected Mr. Ritley's opinion of value, stating "[w]e need not consider any other evidence of value, including the property owner's appraisal . . ." (Appendix to Brief of Appellant, page 24). The BOE did not raise this rejection as an assignment of error and no cross-appeal has been filed. As a result, the issue of whether Mr. Ritley's opinion of value should have been accepted by the BTA has been waived. *Dayton-Montgomery Cty. Port. Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948, 865 N.E.2d 22.

Second, the question of which sale price constitutes the best evidence of value as of January 1, 2004 is not a balancing exercise; the evidence clearly establishes that the sales are not the same. As the BOE has already set forth its argument as to why the sales are not the same in both its initial brief and this reply, it will not restate the same again.<sup>4</sup>

Reply to Appellee's Propositions of Law Numbers 5 and 6:

The BTA erred by failing to order the \$7,400,000 sale price carried forward according to law, and the BOE properly raised this issue in its assignments of error.

HIN argues in its fifth and sixth propositions of law that the BOE can not argue the BTA erred when it failed to accept the

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<sup>4</sup>The BOE would note that if HIN's argument were to be accepted and it determined that the two sales cancel each other out, in light of the fact that the BTA rejected Mr. Ritley's valuation and there being no appeal of the same, the only remaining evidence of value is the \$7,848,400 determined by the county auditor.

\$7,400,000 sale price for years subsequent to 2004 since it did not assign this as error in its notice of appeal. The BOE submits that for a number of reasons it sufficiently raised this issue.

First, this case originated with the complaint filed by HIN for tax year 2004. (Supp. 5) As the case has not yet been resolved, it is clear that the complaint was not finally determined before the commencement of the 2005 tax year and therefore "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." R.C. 5715.19(D). Since the complaint was not finalized prior to tax year 2005, it became a valid complaint for tax year 2005 and the question of value for tax year 2005 became part of the case for tax year 2004. Both tax years were before the BTA.

Second, the BTA was required to base its decision on the evidence before it. *Cleveland Trust Company v. Cuyahoga Cty. Bd. of Revision* (1955), 163 Ohio St. 579, 127 N.E.2d 748. Presuming for purposes of argument that the BTA was correct when it decided that the property should be valued in accord with the \$4,900,000 sale price since this sale occurred closer in time to the January 1, 2004 tax lien date, then it must also be the case that the \$7,400,000 sale dating from 2004 was closer in time to the tax lien date of January 1, 2005. Despite the fact that the

undisputed evidence showed that the \$7,400,000 sale was closer in time to January 1, 2005 than was the \$4,900,000 sale, the BTA did not adopt the \$7,400,000 as value for January 1, 2005. In short, the BTA's final conclusion of value was not supported by the evidence.

Third, the BOE's seventh assignment of error in its Notice of Appeal states:

The Board of Tax Appeals erred by issuing a final conclusion of value not supported by the evidence.

This assignment of error raised the issue of whether the BTA should have valued the subject property at \$7,400,000 as of January 1, 2005, as well as for subsequent years until either the resolution of this appeal or some other event cut off the carry-forward of the original complaint.

The BTA set one value for the property for the 2004 tax year. Pursuant to the BTA's decision and the law, this value carried forward to subsequent years. When the BTA failed to set a different value for the 2005 tax year based on the \$7,400,000 sale which occurred after January 1, 2004, the BTA's conclusion of value as it related to the 2005 tax year and subsequent years was not supported by the evidence. Appellant's seventh assignment of error raises this issue.

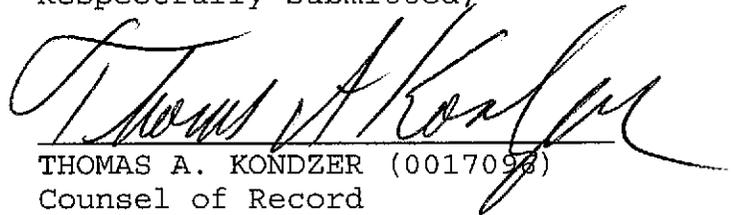
#### CONCLUSION

The BTA had before it two arm's length sales of the subject property. The first sale occurred in 2003 at a sale price of

\$4,900,000. The second sale occurred in 2004 at a sale price of \$7,400,000. Both sales closed and the property transferred. In setting the value of the real estate as of January 1, 2004 the BTA focused on the recording date of the sale and ignored when the sale price was agreed upon by the buyer and seller. When two sales of a parcel of property are both concluded and a transfer of the property occurs, the value of the property for tax lien purposes should be based on the sale price that was negotiated and agreed upon closest to the tax lien date. The critical date is the date the sale price was agreed upon, not the date the transfer was publicly recorded.

The Bedford Board of Education submits that the decision of the BTA was not supported by the record and was contrary to Ohio law. An order should issue valuing the property at \$7,400,000 as of January 1, 2004, and this value should carry forward for the subsequent tax years.

Respectfully submitted,



THOMAS A. KONDZER (0017098)  
Counsel of Record  
Kolick & Kondzer  
24500 Center Ridge Road, #175  
Westlake, Ohio 44145-5628  
(440) 835-1200  
(440) 835-5878 - Facsimile

Counsel for Appellant,  
Bedford Board of Education

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 8, of the 128th GA (2009-2010), apv. by 7/16/09 and filed with the Secretary of State by 7/16/09.

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END OF DOCUMENT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Reply Brief of Appellant, Bedford Board of Education" has been served upon the following this 13 day of August, 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

Counsel for Appellee,  
HIN, LLC

TIMOTHY J. KOLLIN  
Counsel of Record  
Courts Tower - Eighth Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

Counsel for Appellees,  
Cuyahoga County Board of  
Revision and Cuyahoga County  
Auditor

RICHARD CORDRAY  
Ohio Attorney General  
Counsel of Record  
State Office Tower, 17<sup>th</sup> Floor  
30 East Broad Street  
Columbus, Ohio 43215-3428

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