

IN THE SUPREME COURT OF OHIO

AERC Saw Mill Village, Inc.,)
)
Appellant,)
)
vs.)
)
Franklin County Board of Revision,)
Franklin County Auditor, and Board of)
Education of the Dublin City Schools)
District and the Ohio Tax Commissioner,)
)
Appellees,)
)

Case No. 09-1765

Appeal from the Ohio
Board of Tax Appeals

BTA Case Nos. 2007-A764
2008-A-157

NOTICE OF APPEAL OF AERC SAW MILL VILLAGE, INC.

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IN THE SUPREME COURT OF OHIO

AERC Saw Mill Village, Inc.,)	
)	Case No. _____
Appellant,)	
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vs.)	
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Franklin County Board of Revision,)	Appeal from the Ohio
Franklin County Auditor, and Board of)	Board of Tax Appeals
Education of the Dublin City Schools)	
District and the Ohio Tax Commissioner,)	
)	
Appellees.)	BTA Case Nos. 2007-A-764
)	2008-A-157

NOTICE OF APPEAL OF AERC SAW MILL VILLAGE, INC.

Appellant, AERC Saw Mill Village, Inc., hereby gives notice of an appeal as of right, pursuant to R.C. 5717.04, to the Supreme Court of Ohio, from a Decision and Order of the Ohio Board of Tax Appeals (“BTA”), journalized in case numbers 2007-A-764 and 2008-A-157 which were consolidated for hearing and decision before the BTA and decided on September 1, 2009.

A true copy of the Decision and Order of the Ohio Board of Tax Appeals being appealed is attached hereto and incorporated herein by reference as Exhibit A.

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

ASSIGNMENT OF ERROR NO. 1:

The Decision and Order of the Board of Tax Appeals is unreasonable, unlawful and arbitrary because the Board of Tax Appeals erroneously and unjustifiably values the subject property for tax year 2005 based upon a 2002 valuation stipulation in violation of the county auditor’s statutory duty to reappraise each parcel of property every six years pursuant to Ohio Revised Code 5713.01(B) where the 2005 value should be based upon the 2005 tax year value certified by the county auditor as part of the reappraisal process..

ASSIGNMENT OF ERROR NO. 2:

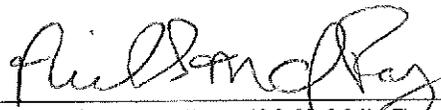
The Decision and Order of the Board of Tax Appeals is unreasonable, unlawful and arbitrary because the Board of Tax Appeals erroneously and unjustifiably affirmed a tax year 2006 valuation that was based upon a 2002 valuation stipulation rather than the 2005 tax year value certified by the county auditor as part of the reappraisal process.

ASSIGNMENT OF ERROR NO. 3:

The Decision and Order of the Board of Tax Appeals is unreasonable, unlawful and arbitrary because, in denying the Appellant the benefits and protection afforded by the reappraisal mandated by Ohio Revised Code 5713.01(B), it violates Appellant's right to due process of law and equal protection under the Fifth and Fourteenth Amendments of the Constitution of the United States of America, and Article I, Section 2 of the Ohio Constitution, and violates Petitioner's right to due course of law under Article I, §16 of the Constitution of the State of Ohio.

Appellant requests that the Court reverse the unreasonable and unlawful decision of the Board of Tax Appeals and find that the value of the subject property for tax years 2005 and 2006 is the value certified by the county auditor as part of the sexennial reappraisal mandated by Ohio law of \$17,900,000.

Respectfully submitted,



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**PROOF OF SERVICE UPON
OHIO BOARD OF TAX APPEALS**

This is to certify that the Notice of Appeal of AERC Saw Mill Village, Inc., was filed with the Ohio Board of Tax Appeals, State Office Tower, 24th Floor, 30 East Broad Street, Columbus, Ohio as evidenced by its date stamp as set forth hereon.



Nicholas M.J. Ray (0068664) Counsel of Record

COUNSEL FOR APPELLANT
AERC SAW MILL VILLAGE, INC.

CERTIFICATE OF SERVICE

This is to certify that on this 1st day of October 2009, a copy of the Notice of Appeal and a copy of the Demand to Certify Transcript were sent via certified mail to Mark H. Gillis, Esq., Rich & Gillis Law Group, LLC, 6400 Riverside Drive, Suite D, Dublin, OH 43017, Counsel for the Board of Education of the Dublin City Schools District; Paul Stickel, Esq., Franklin County Assistant Prosecuting Attorney, 373 South High Street, 20th Floor, Columbus, Ohio 43215; and, Richard Cordray, Ohio Attorney General, 30 East Broad Street, 17th Floor, Columbus, OH 43215-3428, Counsel for the Ohio Tax Commissioner.



Nicholas M.J. Ray (0068664) Counsel of Record

COUNSEL FOR APPELLANT
AERC SAW MILL VILLAGE, INC .

OHIO BOARD OF TAX APPEALS

AERC Saw Mill Village, Inc.,)	
)	
Appellant,)	CASE NOS. 2007-A-764, 2008-
)	A-157
vs.)	
)	(REAL PROPERTY TAX)
Franklin County Board of Revision,)	
Franklin County Auditor, and Board of)	DECISION AND ORDER
Education of the Dublin City Schools)	
District,)	
)	
Appellees.)	

APPEARANCES:

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Entered SEP 01 2009

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

This cause and matter came on to be considered by the Board of Tax Appeals upon two notices of appeal filed herein by the above-named appellant, from decisions of the Franklin County Board of Revision. In said decisions, the board of revision determined the taxable value of the subject property for tax years 2005 and 2006.

The matter was submitted to the Board of Tax Appeals upon the notices of appeal filed with this board, the statutory transcripts certified to this board by the county board of revision, the joint stipulation of discovery responses into the record by the parties hereto, and the briefs filed by counsel to the appellant and appellee school board.

The property in question is located in the city of Columbus-Dublin City School District taxing district and appears on the auditor's records as parcel number 590-205287. The subject, a 340-unit apartment complex built in 1987, consists of 12 buildings and is situated on approximately 22.6 acres.

Before considering the values assigned to the subject parcel for tax year 2006, this board must first consider whether the 2002 valuation was properly carried forward and applied to tax year 2005 by the auditor and retained by the BOR. Specifically, the subject property had been the subject of a 2002 tax year complaint that was decided by the Franklin County Board of Revision and appealed to the Board of Tax Appeals. Ultimately, the 2002 tax year values were stipulated by the parties at the Board of Tax Appeals, and this board's order, stipulating such taxable values and

directing that the stipulated values be carried forward according to law,¹ was issued on September 1, 2006. Thereafter, in May 2007, appellant's counsel sent a letter to the BOR seeking consideration of the 2005 valuation of the subject property which the owner, AERC Saw Mill Village, Inc. ("AERC"), believed was improperly carried forward from the 2002 valuation. In January 2008, the BOR issued its determination regarding the 2005 tax year value of the subject. We also note that in March of 2007, the property owner filed an original decrease complaint for tax year 2006 and in July 2007, the BOR determined the 2006 valuation of the subject.

In Franklin County, tax year 2002 was the first year of the triennial period and tax year 2005 was a reappraisal year for the county. Because the tax year 2002 complaint was not finally decided until September 2006, the complaint "carried over" for tax year 2005, pursuant to the provisions of R.C. 5715.19(D). That section provides in pertinent part that:

"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 *** or any other person or entity authorized to file a complaint under this section."

¹ Consistent with the parties' agreement and our own historic practice, we acknowledged that the values agreed upon as of January 1, 2002, should be "carried forward according to law." While the Supreme Court has previously criticized the use of such language, see, e.g., *Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 105 Ohio St.3d 404, 2005-Ohio-2285, this board has explained why we are constrained to include this reference. See *David W. Swetland Building Co., Ltd. v. Cuyahoga Cty. Bd. of Revision* (June 30, 2005), BTA Nos. 2003-A-1183, et al., unreported.

The Franklin County Auditor carried over the 2002 values for tax year 2005, even though the auditor had independently determined new, lower 2005 values for the property, arguably as a result of the 2005 county-wide reappraisal. See Stipulated Discovery Responses, Admission #6. In reaction to the adoption of the higher 2005 values, the property owner's counsel wrote a letter to the county board of revision requesting "that the Franklin County Board of Revision set this matter for hearing in reference to the tax lien date of January 1, 2005 because the 2002 tax year case regarding this property was still pending before the Ohio Board of Tax Appeals on lien date. Subsequently, the Ohio Board of Tax Appeals issued a decision regarding this property and the property owner believes that this decision should not have carried-forward to the new triennial." S.T. at Ex. 2. As a result of a hearing regarding the subject property's tax year 2005 valuation, the board of revision ultimately carried the subject property's stipulated value from tax year 2002 forward to 2005.

As we consider the foregoing, we are mindful that this board has previously determined a similar case, namely *David W. Swetland Building Co., Ltd. v. Cuyahoga Cty. Bd. of Revision* (June 30, 2005), BTA Nos. 2003-A-1183, et al., unreported. In *Swetland*, the subject property had been the subject of a 1997 tax year complaint that was decided by the Cuyahoga County Board of Revision and appealed to the Board of Tax Appeals. Ultimately, the 1997 tax year values were stipulated by the parties at the Board of Tax Appeals, and this board's orders stipulating the taxable values in those appeals were issued on July 13, 2001. In Cuyahoga County, tax year

1997 was the first year of the triennial period and tax year 2000 was a reappraisal year for the county. Because the tax year 1997 complaint was not finally decided until July 2001, the complaint “carried over” for tax year 2000, pursuant to the provisions of R.C. 5715.19(D). Instead of carrying over the 1997 values for tax year 2000, the Cuyahoga County Auditor assigned new values to the property, arguably as a result of the 2000 county-wide reappraisal. We found that the Cuyahoga County Auditor should have carried the values determined by the BTA for tax year 1997 forward into tax year 2000.

Our decision in *Swetland*, supra, was based in part on the Supreme Court’s pronouncement in *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 305, wherein the property owner/complainant argued that under R.C. 5715.19(D), the real property tax complaint it filed for tax year 1993 continued to be valid for 1996 because the value contested in the 1993 complaint was not finally decided until tax year 1996. The facts in *Columbus* further mirror those in the instant matter in that tax year 1996 began a new triennial period for the county, and tax year 2005 herein was a reappraisal year. The court stated:

“Under R.C. 5717.03, in appeals from boards of revision, the BTA must determine the taxable value of the property and certify the decision to, inter alios, the county auditor. When the BTA’s order becomes final, the tax officials, including the county auditor, must ‘make the changes in their tax lists or other records which the decision requires.’ Evidently, the Franklin County Auditor did not execute this obligation in this case. The auditor should have automatically carried over the 1993 value determined in 1996 by the BTA for tax year 1996. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* *** [(1996), 74 Ohio St.3d 639].” Id. at 307.

The court went on to state that it “interpret[ed] R.C. 5715.19(D) to mean that the 1993 complaint continued to be valid for tax year 1996 and that Inner City was not required to file a fresh complaint for that year. Of course, a fresh complaint filed by Inner City or the BOE would have halted the automatic carryover of the value determined in the 1993 complaint.” Id. at 307.

Later, in May 2005, in *Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 105 Ohio St.3d 404, 2005-Ohio-2285, the court acknowledged and distinguished its prior holding in *Columbus* as it considered the facts before it. Specifically, in *Cleveland*, a value had been stipulated at the Board of Tax Appeals in January 1998 for a property for tax year 1994, which value carried forward, according to law. Thereafter, in April 2000, the auditor notified the then previous property owner that the subject property’s values had been increased from the stipulated values for tax years 1997 through 1999. In June 2000, the new property owner then filed a complaint for tax years 1997 through 1999, yet the BOR apparently only determined a value for tax year 1997. On appeal, this board determined that the property owner’s complaints for tax years 1997 and 1998 should have been dismissed and the court agreed, stating “a complaint for a 1998 tax year valuation had to be filed with the BOR by March 31, 1999. Royal’s June 27, 2000 complaint does not meet the requirements of R.C. 5715.19(A)(1) for the filing of a complaint concerning tax years 1997 and 1998.” The court clarified that because a complaint regarding the property’s valuation had been filed by the previous owner for tax year 1994, but had not been finally determined on appeal to the BTA until January 1998, the continuing complaints

for tax years 1997 and 1998 remained open until the auditor complied with the order of the BTA. Specifically, the court stated that in *Columbus*, “[t]he property owner sought merely to preserve the lower valuation it had obtained from the BTA; it did not seek to further reduce that valuation.” In *Cleveland*, the new property owner’s complaint sought to further reduce the property’s stipulated valuation.

Thus, based upon the foregoing, we find no statutory authority or case law to support AERC’s position that the county auditor was precluded from carrying a property valuation forward into a sexennial reappraisal year. With no complaint filed for tax year 2005 to otherwise suspend the application of the carryover provision, we find that the Franklin County Auditor properly carried the values determined by the BTA for tax year 2002 forward into tax year 2005. See *David W. Swetland Building Co., Ltd.*, supra. Accordingly, the value for the subject property for tax year 2005 shall be as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 2,448,000	\$ 856,800
Bldg	17,652,000	6,178,200
Total	\$20,100,000	\$ 7,035,000

With regard to tax year 2006, jurisdiction was established with the Franklin County Board of Revision for such year with the filing of a decrease complaint by AERC in March 2007. Such filing suspended the application of the carryover provisions of R.C. 5715.19(D) and the board of revision proceeded to find value for tax year 2006. The value for the subject parcel for tax year 2006, as determined by the county auditor and retained by the board of revision, is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 2,448,000	\$ 856,800
Bldg	17,652,000	6,178,200
Total	\$20,100,000	\$ 7,035,000

Appellant AERC contends that the auditor and the board of revision have overvalued the parcel in question by not relying upon the value, as previously opined by the auditor for tax year 2005, i.e., \$17,900,000, as the indicator of the subject property's value for tax year 2006. However, AERC did not present any evidence of the subject's value to this board or the BOR, and simply sought to have the auditor's originally appraised value of the subject for tax year 2005, i.e., the sexennial reappraisal value, carried forward to tax year 2006.

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

Further, when determining value, it has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*

(1977), 50 Ohio St. 2d 129; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. Absent a recent sale, as in the instant case, true value in money can be calculated by applying any of three alternative methods provided for in Ohio Adm. Code 5703-25-07: 1) the market data approach, which compares recent sales of comparable properties, 2) the income approach, which capitalizes the net income attributable to the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value.

AERC offered no evidence of the subject's value. Accordingly, based upon the foregoing, this board finds that appellant has failed to demonstrate that the value which is sought has any basis in the market, as of the tax lien date in question. See *Cleveland Bd. of Edn.*, supra, at 337; *Springfield Local Bd. of Edn.*, supra, at 495; *Mentor Exempted Village Bd. of Edn.*, supra, at 319. Therefore, we find, as of January 1, 2006, the value of the subject parcel shall be that which the auditor previously determined and the board of revision retained, as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 2,448,000	\$ 856,800
Bldg	17,652,000	6,178,200
Total	\$20,100,000	\$ 7,035,000

It is the decision and order of the Board of Tax Appeals that the Franklin County

Auditor shall list and assess the subject property in conformity with this decision.

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