

ORIGINAL

IN THE SUPREME COURT OF OHIO

AERC Saw Mill Village, Inc.,)	
	)	Case No. 2009-1765
Appellant,)	
)	
vs.)	
)	
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

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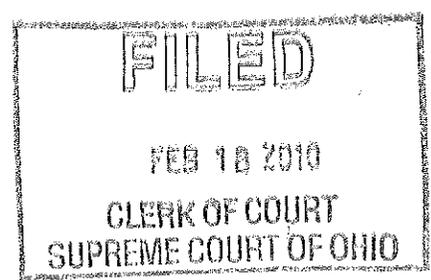


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STATEMENT OF THE CASE AND FACTS

This case comes before the Court pursuant to an appeal from a decision of the Ohio Board of Tax Appeals (“BTA”). This matter primarily concerns the application of R.C. 5713.01(B), which is the Revised Code section that relates to the statutory duty of a County Auditor to reappraise each parcel of property every six years, and R.C. 5715.19(D), which applies to, *inter alia*, the final determination of a complaint against valuation. As is evident in this case, the statutory duty of a County Auditor to reappraise property in its county every six years is infringed upon when a County Auditor, upon order from the BTA, carries forward a value from a tax year preceding a six-year reappraisal period through such reappraisal period.

In this matter, an order was issued by the BTA in 2006 that related to a 2002 valuation of the appellant’s property. The Franklin County Auditor (“Auditor”) subsequently carried forward the 2002 property value through 2005, a time period which included a statutorily mandated six-year reappraisal of all property in Franklin County. The reappraisal, which took place in 2005, determined a value for the subject property that differed significantly from the 2002 value that the BTA “carried forward according to law.” Because of the Auditor’s and BTA’s actions, the appellant in this matter was not only denied the benefits and protection afforded by the Auditor’s 2005 reappraisal, but was further harmed by not receiving the carryover of the new 2005 appraisal value into the 2006 tax year. It was, therefore, error on the part of the BTA to affirm the decision of the Franklin County Board of Revision (“BOR”), which erroneously adopted a value determined by the BTA in 2002 prior to the mandated reappraisal.

The facts relevant to this matter are as follows. The property in issue, commonly known as Sawmill Village Apartments, consists of a total area of approximately 22.61 acres and is identified as parcel number 590-205287-00 by the Auditor. It is located at 6900 Sawmill

Village Drive in Columbus, Ohio and is improved with a 1987-vintage 340-unit apartment complex of 12 total buildings.

The property was the subject of a 2002 complaint before the BOR in case number 02-694. On March 18, 2005 the BOR issued a decision retaining the Auditor's 2002 value for the subject property. The matter was appealed to the BTA by the property owner in BTA case number 2005-M-377.

During the pendency of this matter before the BTA, the Auditor reappraised the subject property as part of the sexennial reappraisal mandated by R.C. 5713.01(B). The subject was reappraised for the new six-year period at \$17,900,000.¹ This reappraised value was finalized by the Auditor while the 2002 matter was pending on appeal at the BTA.

In August 2006, the parties before the BTA reached an agreement as to the value of the property as of January 1, 2002. The parties agreed to a fair market value of \$20,100,000. 2002 was the beginning of the triennial up-date in Franklin County. The BTA issued its order on September 1, 2009 approving the stipulated value for January 1, 2002, and indicted that it should be "carried forward according to law."²

After valuing and certifying the value of the subject property for 2005 at \$17,900,000, the Auditor interpreted the language "carried forward according to law" from the BTA's 2006 Order to mean that the 2002 settlement overrode the Auditor's statutory duty to reappraise the property. The Auditor's value of the subject property for 2005 was thereupon increased to \$20,100,000 in December 2006, well after the deadline appellant had to appeal this revised assessment.³ In the Joint Motion to Stipulate Discovery Responses into the Record as Fact, the Auditor admits to the original reappraisal valuation, and that the "sole reason" for the change in value was the carry

¹ Appellant's Supplement, pp. 9, 22, 28.

² Appellant's Supplement, pp. 13 - 14.

³ Appellant's Supplement, p. 23.

forward of the 2002 settlement.⁴

The Auditor also admits that notice of this change to the certified 2005 value was not given until December 2006, well after the March 31, 2006 deadline to file a complaint against the valuation of the subject property for 2005.⁵ The property owner, through counsel, requested a hearing on the 2005 valuation of the property consistent with the continuing complaint jurisdiction of R.C. 5715.19(D).⁶ When the hearing was not yet held by the deadline to file a 2006 complaint, the property owner filed a formal complaint against the 2006 value of the subject property in BOR Case number 06-891.⁷

The BOR first issued a decision in the 2006 case dated July 18, 2007. The BOR decided that the property's value should remain unchanged, and that decision was appealed to the BTA in BTA case number 2007-A-764.⁸ The BOR then issued a decision in the 2005 continuing jurisdiction case dated January 4, 2008, also finding no change to the property's value, and that decision was appealed to the BTA in BTA case number 2008-A-157.⁹ By order dated September 16, 2008 these cases were consolidated for hearing, administrative, and disposition purposes. The parties then filed a Joint Motion to Stipulate Discovery Responses into the Record as Fact, waived their right to an evidentiary hearing, and requested a briefing schedule.¹⁰

⁴ Appellant's Supplement, pp. 24 - 25. The Auditor references *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St. 3d 305 in its discovery responses in support of its change but, as will be discussed further infra, this case is inapplicable as it does not address the Auditor's statutory duty to reappraise property.

⁵ Appellant's Supplement, p. 26.

⁶ Appellant's Supplement, p. 1.

⁷ Appellant's Supplement, p. 2.

⁸ Appellant's Supplement, pp. 3 - 5.

⁹ Appellant's Supplement, pp. 6 - 8.

¹⁰ Appellant's Supplement, pp. 17 - 18.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

The BTA and the Auditor did not comply with Ohio law when carrying forward the 2002 value of the subject property into 2005 and 2006. The following propositions of law will provide sufficient justification for this Court to reverse the decision of the BTA.

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 order, 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.
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.
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 process of law under Article I, §16 of the Constitution of the State of Ohio. The Board of Tax Appeals decision also violates the uniformity provisions under Article XII, §2 of the Ohio Constitution.

Appellant's Proposition of Law 1¹¹

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 order, 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.

County Auditor's throughout the state of Ohio have, for decades, consistently adhered to their duty to reappraise property in their county pursuant to the six-year time period mandated by

¹¹ This proposition of law directly addresses Assignment of Error No. 1 from Appellant's Notice of Appeal.

R.C. 5713.01(B):

“The auditor shall assess all the real estate situated in the county at its taxable value in accordance with sections 5713.03, 5713.31, and 5715.01 of the Revised Code and with the rules and methods applicable to the auditor’s county adopted, prescribed, and promulgated by the tax commissioner. The auditor *shall view and appraise or cause to be viewed and appraised* at its true value in money, each lot or parcel of real estate, including land devoted exclusively to agricultural use, and the improvements located thereon *at least once in each six-year period* and the taxable values required to be derived therefrom *shall be placed on the auditor’s tax list and the county treasurer’s duplicate* for the tax year ordered by the commissioner pursuant to section 5715.34 of the Revised Code.” (Emphasis added.)

In *Andover Twp. Bd. of Trustees v. O’Brien* (Nov. 26, 2004), 159 App.3d 231, 823 N.E.2d 524, the Court declared “R.C. 5713.01(B) states that the auditor ‘shall assess all real estate situated in the county at its taxable value in accordance with sections 5713.03, 5713.31, and 5715.01 of the Revised Code.’ Thus, if property is real estate, it *must be assessed*. The auditor has no discretion in this respect. If the property at issue is, or has become, real estate, appellant *must assess in accordance with law*.” (Emphasis added.) *Id.* at ¶9. In the instant matter, the Auditor was prohibited from exercising its duty to assess the subject property. Because of the BTA’s error in interpreting the provisions of R.C. 5713.01(B), and its disregard of corresponding case law that requires the subject property to be assessed during the relevant six-year period, appellant was forced to be liable for a significant increase in property taxes that it otherwise should not have been responsible for.

Necessary to a discussion of the Auditor’s duty to reassess real property pursuant to R.C. 5713.01(B), and to the matters at issue in this case, is a discussion of R.C. 5715.19(D). This broad statute relates to the final determination of complaints against valuation, and to continued jurisdiction over intervening tax years between the original tax year in issue and the date the

complaint is finally determined.

First, however, appellant notes that the issue of the BOR's jurisdiction over tax year 2005, based upon the "continuing-complaint" provisions of R.C. 5715.19(D), is not a matter in dispute by the parties. As appellant's tax year 2002 complaint was pending at the time of the stipulation of value entered into between the parties in 2006, it is clear that the BOR, under its "continuing-complaint" jurisdiction, had authority to address the matter. R.C. 5715.19(D) plainly states, in pertinent part:

"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."

See *Columbus Bd. of Edn. V. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 305 and *Cleveland Municipal School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (2005), 105 Ohio St.3d 404.

What is in issue, however, and what has created confusion for administrative bodies, courts, and property owners, is the "carry-forward" provision present in R.C. 5715.19(D). R.C. 5715.19(D) provides, in relevant part:

"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. ***.

The interpretation and application of this statute has, as mentioned above, created problems for those who must implement it. Despite protestations from this Court, the BTA has used the language “carried forward according to law” in its decisions in reference to R.C. 5715.19(D). In this matter, such language has resulted in the statutorily mandated reappraisal being ignored in place of the “carry-forward” of a value determined by order of the BTA. Such value may or may not be indicative of the properties fair market value as of the relevant tax lien date of January 1, 2002; it is even more of a logical reach to assume that such a value is accurate for 2003, 2004, 2005, and 2006. Because it has been long recognized that the value of real property fluctuates based on a number of different factors, County Auditors have been required to perform a full reappraisal of property on a recurring six-year basis. Blindly carrying forward a value based on nothing but a number in effect three to four years prior to ensuing tax years produces an artificial value not grounded in principles of valuation. Notwithstanding other important factors such as physical changes to property and sales, it is evident from recent events in the economy and real estate markets that changes in market conditions can have a massive effect on the value of real property. All of these important factors are ignored when a “carry-forward” period happens to fall over a sexennial reappraisal required by R.C. 5713.01(B).

In *Columbus Bd. of Edn.*, supra, this Court tangentially addressed the “carry-forward” issue present in this appeal in terms of a triennial update period, not a sexennial reappraisal period, as is the issue in the instant matter. In *Columbus*, the property owner filed a complaint against valuation for tax year 1993. The matter was appealed to the BTA, which issued its decision in 1996, stating that the BOR did not have authority to set the value for 1996. The County Auditor determined that the BTA’s decision applied only to tax years 1993, 1994, and 1995. The Court found that the 1993 value did “carry-forward” to 1996. The important

distinction between this case and *Columbus* is that 1996 was a triennial update year, not the year of a sexennial reappraisal. In an “update” period, property in a county is not reappraised, but is “updated” according to a percentage factor. The County Auditor is under no statutory obligation to reappraise the property at that time, and completes the triennial update purely as a procedural matter, carrying forward the previous values after they have been adjusted based on a percentage factor. A sexennial reappraisal mandates that the County Auditor “*shall view and appraise or cause to be viewed and appraised at its true value in money, each lot or parcel of real estate *** at least once in each six-year period and the taxable values *** shall be placed on the auditor’s tax list and the county treasurer’s duplicate ***.*” (Emphasis added.) R.C. 5713.01(B).

Furthermore, *Columbus* holds only that a decision is carried forward as required. It does not hold that, if jurisdiction exists, the decision must be carried forward. In case law discussed below, Courts have elected not to “carry-forward” decisions into later tax years. The Court stated that “[u]nder 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.*’ ***.” (Emphasis added.) *Columbus*, at 317.

In *Concord Columbus, L.P. v. Testa* (Aug. 5, 1997), 122 Ohio App.3d 205, 701 N.E.2d 449, the Court primarily reviewed a jurisdictional issue related to a second filing in a triennial period, i.e., whether a filing was permitted under R.C. 5715.19(A)(2) when a County Auditor made changes to the value of a property. Related to the Court’s discussion of that issue, however, were issues relevant to this matter. First, the Court did *not* “carry-forward” the decision of the Court of Common Pleas to the date the Common Pleas matter was finally

determined in 1996, electing to make its decision applicable only to tax years 1994 and 1995, as opposed to 1996, which was a triennial update year. A decision by a Court of Common Pleas is procedurally analogous to a decision of the BTA, so it is important to note that the Court did not find it necessary to “carry-forward” the decision through 1996, although the BTA, through its use of the language “carried forward according to law,” believes that the decision year should be included.¹² Appellant therefore cites *Concord* for two reasons: The 2002 value in this matter should *not* be carried forward into tax year 2005, and likewise, 2006, because of a required reappraisal, and that even a triennial update year was not included as part of the *Concord* Court’s final decision. Appellant wishes only to stop any “carry-forward” from interfering with a statutorily mandated reappraisal period; it does not suggest that, as in *Concord*, a value cannot be carried forward through a triennial update period.

While, as noted above, the primary issue in *Concord* was not the “carry-forward” provision in R.C. 5715.19(D), such provision was discussed and reviewed; the Court stated that “[t]he carryover-value provisions essentially determine whether a prior valuation must be applied to an ensuing tax year.” *Concord Columbus*, supra, at 209. According to the Court in *Concord*, “ensuing” tax years did not include the tax year 1996, even though the decision was rendered in that year. The Court’s use of the language “ensuing” tax years is analogous to the language in R.C. 5715.19(D) of “succeeding” tax years, as it relates to a complaint “finally determined.” It is appellant’s strong belief that “succeeding” tax years should not include a sexennial reappraisal year. As noted above, appellant does not contest values being carried forward through a triennial update period, as there is no requirement to independently appraise property, unlike the reappraisal requirements of R.C. 5713.01(B). An update is certainly more of a procedural matter

¹² Pursuant to R.C. 5717.05, appeals from decisions of county boards of revision may be taken either to the BTA or to a Court of Common Pleas.

than a full reappraisal, where properties must be assessed according to law.

This Court predicted problems with the “carried forward according to law” language in use by the BTA in its decision in *Cleveland Mun. School Dist. Bd. of Edn.*, supra, wherein it stated:

“As this case shows, problems under R.C. 5715.19(D) can easily arise when general language regarding real estate valuation is directed to the county auditor with the words ‘to be carried forward according to law.’ This language can leave the parties and auditor confused over the exact years to which the decision applies. See *Oberlin Manor Ltd. v. Lorain Cty. Bd. of Revision* (1994), 69 Ohio St.3d 1, 629 N.E.2d 1361. If the boards of revision and the BTA would specify the years covered by their orders to the auditor and other county officials, the miscommunication we see here could be avoided.”

The *Oberlin Manor Ltd.* case cited by this Court in *Cleveland Mun. School Dist. Bd. of Edn.*, supra, is the most relevant to the instant matter, as it is factually very similar to this case, and held that a decision by the BTA was unreasonable and unlawful whereupon the BTA did not properly consider the “carry-forward” issue and did not specify the tax years to which its order applied. Similar to this matter, the BTA did not specify the tax years that applied in its decision. The tax year in issue in *Oberlin* was 1982, the first year of a triennial update. A full reappraisal was due in the county in 1985. When confronted with a situation such as in the instant matter, where the BTA did not specify tax years that applied to its decision, the Court, mindful of R.C. 5715.19(D), found that the decision applied only to the tax years in the relevant triennium, i.e., 1983 and 1984, and did *not* extend the application of the decision to 1985, the year of the sexennial reappraisal. The Court specifically stated that “[t]he final determination of Oberlin Manor’s complaint as to the assessment of real property taxes for 1982 applies to the subsequent tax years in the *same triennium*.” (Emphasis added.)

Furthermore, the Court in *Oberlin* did *not* carry forward the 1982 value until the time the

BTA decision was rendered, which occurred several years after the original tax year in issue. This is similar to the Court's decision in *Concord* to refuse to "carry-forward" a value into a decision year. This issue was not specifically addressed by the Court *Oberlin*, but it was an obvious possibility. The triennial period was the furthest the Court chose to "carry-forward" the 1982 value.

Additionally, it is pertinent to note that the Court considered that the property was in no way different during the subsequent years in the triennium, namely, 1983 and 1984, than in 1982, which gives weight to the possibility that the Court may not have extended the 1982 value past the relevant tax year at all, if such circumstances such as changes in market conditions or changes to the property had occurred.

Appellant recognizes that authority exists for the proposition that the filing of a new, valid complaint halts the "carry-forward" provisions in R.C. 5715.19(D). *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1996), 74 Ohio St.3d 639, 660 N.E.2d 1179. As argued above, it is appellant's contention that, similar to the proposition that a valid, new complaint halts the "carry-forward" provision, that a sexennial reappraisal should terminate any "carry-forward" of a prior value. With regard to appellant not filing a new complaint for tax year 2005, however, the property owner *did not know until December 2006* that its property had been changed for tax year 2005, well after the March 31, 2006 deadline for filing a tax year 2005 complaint.¹³ This is another example of the inequitable and unfair nature of the "carry-forward" provision and the terminology "carried forward according to law." Such a circumstance would be avoided if the statutorily mandated reappraisal value is recognized instead of a prior year value, which is most likely not reflective of the property's market value. Furthermore, it cannot be assumed that the vast majority of property owners and those that benefit from property tax

¹³ Appellant's Supplement, p. 26.

revenue are aware of the provisions to stop a “carry-forward,” which is another reason why a sexennial reappraisal should establish value as opposed to a value established sometimes several years after the reappraisal period.

In *Freshwater v. Belmont Cty. Bd. of Revision* (1997), 80 Ohio St.3d 26, 684 N.E.2d 304, this Court stated “[t]he essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time.” *Id.* at 307. A value for a series of years that goes through a sexennial reappraisal, such as that determined by the BTA’s interpretation of the “carry-forward” provisions in this matter, could not and does not take into account facts germane to, as an example, the value of the subject property on January 1, 2003, January 1, 2004, January 1, 2005, and January 1, 2006. In *Olmstead Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (2009), 122 Ohio St.3d 134, 909 N.E.2d 597, this Court stated “[t]o presume that the earlier year’s value was correct while having no authority to determine its validity would interfere with the statutory mandate that the assessor should determine the *correct value as of the tax-lien date of the current tax year*. R.C. 5715.19(A)(1)(d) (valuation complaint pertains to the ‘current tax year’); *Olmstead Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 552, 555, 664 N.E.2d 922.” In this matter, it is clear that if the Auditor, if required to “carry-forward” the property’s 2002 value through tax year 2006, is not determining the validity of the subject property’s value as of the relevant tax-lien dates. While not a perfect solution, if, at the very least, the sexennial reappraisal is allowed to have its intended effect, the property would be accurately valued according to law for tax years 2005 and 2006.

The importance of changes in market conditions, which are considered in a reappraisal mandated by R.C. 5713.01(B), was recently addressed by this Court in *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2009), 124 Ohio St.3d 27, 2009-Ohio-5932. By

disregarding the sexennial reappraisal required by R.C. 5713.01(B) in favor of a “carry-forward” value that may or may not be accurate as to the value of a property for a particular year, the importance of changing market conditions is likewise disregarded, to the detriment of both property owners and those who benefit from property tax revenues.

Based upon the above, it is evident that the decision of the Board of Tax Appeals to ignore the value determined by the Auditor in its statutorily mandated 2005 reappraisal was unreasonable, unlawful, and arbitrary. The provisions regarding the “carry-forward” of a decision should not be interpreted to mean that a required countywide reappraisal be overlooked. If it is, the inequity that results will harm property owners, as is the case here, and those who benefit from property tax revenue. If the BTA is allowed to continue to interpret “carried forward according to law” to mean a decision will encompass all tax years from the initial tax year to the date of the BTA’s (or Common Pleas Court’s) decision, without regard to a County Auditor’s required reappraisal, illogical and unreasonable results will follow. In this matter, if the reappraisal is ignored, the subject property will not have been reappraised by the county for *ten years* (the 2011 reappraisal period in Franklin County). Given the recent staffing cuts at the BTA, it is not unreasonable to assume that decisions may be delayed for an indefinite period of time, resulting in values that may “carry-forward” through two reappraisal periods, denying the property owner its right to a reappraisal under R.C. 5713.01(B) *twice*.

The vast majority of property owners, and those groups who benefit from property tax revenue, do not have the knowledge or the resources to consistently monitor and challenge their tax values, and should not be penalized by possibly having their right to a reappraisal ignored. Such results could not have been the intention of R.C. 5715.19(D) and the relevant case law. To avoid such unfair and illegal results, appellant urges this Court to find that the BTA erroneously

valued the subject property at its 2002 value instead of the value determined by the Auditor's 2005 statutorily mandated reappraisal, and to reverse the unreasonable and unlawful decision of the BTA.

Appellant's Proposition of Law 2¹⁴

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.

Appellant asserts that in addition to the tax year 2005 valuation, the 2006 tax year valuation was also erroneously affirmed by the BTA. The value for 2006 should be the value as determined by the Auditor for 2005, i.e., \$17,900,000, not the value as carried forward by the BTA. As noted above, the property owner did not know until December 2006 that the value had been changed for the subject property, when it received its property tax bill which reflected the change in valuation. The property owner, through its counsel, requested a hearing on the 2005 valuation of the subject property, but a hearing was not scheduled as of the deadline to file a tax complaint for tax year 2006. As such, the property owner was forced to file a complaint for tax year 2006. The *only* reason for the filing of the tax year 2006 complaint was to assist in rectifying the reappraisal question at issue here. In fact, the Auditor's reappraised value for 2005 was asserted in appellant's tax year 2006 complaint. The property owner, as mentioned above, is aware of the existing case law regarding the ability of a valid, new complaint to halt a "carry-forward" value. The property owner in this matter, however, should not be unfairly penalized in ensuing tax years for attempting to rectify what it asserts is an error as a matter of law for the relevant tax year, i.e., 2005. If this Court properly decides to uphold the mandatory reappraisal provisions of R.C. 5713.01(B), the Auditor's value for 2005 should, as it normally would, carry

¹⁴ This proposition of law directly addresses Assignment of Error No. 2 from Appellant's Notice of Appeal.

over to 2006.

Appellant's Proposition of Law 3¹⁵

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 Appellant's right to due process of law under Article I, §16 of the Constitution of the State of Ohio. The Board of Tax Appeals decision also violates the uniformity provisions under Article XII, §2 of the Ohio Constitution.

The record in this matter reflects the unequal treatment of a taxpayer who is subject to a penalizing "carry-forward" provision, and that taxpayer who receives the benefit of a reappraisal mandated by R.C. 5713.01(B). Further, appellant's right to due process of law is violated when it is denied the protection of a mandatory reappraisal. As a property owner in the State of Ohio, appellant is entitled to the provisions in the Ohio Revised Code that apply to the assessment of real estate, particularly those provisions that are mandatory, not discretionary. By not allowing appellant's property to be reappraised at least once every six years, the BTA has denied appellant its right to due process of law.

Additionally, the Ohio Constitution requires that "[I]and and improvements thereon shall be taxed by uniform rule according to value ***." Ohio Constitution Article XII, §2. This required uniformity cannot be accomplished if the circumstances of this matter are applied by a County Auditor to all property owners. Certain property owners would be subject to mandatory reappraisals, while others would not because of an outstanding tax complaint. Some properties would be appraised every six years, while others would be limited to a reappraisal every twelve years, or even every eighteen years, depending on the time period between when a decision is rendered by the BTA or a Court of Common Pleas. This creates two classes of properties that

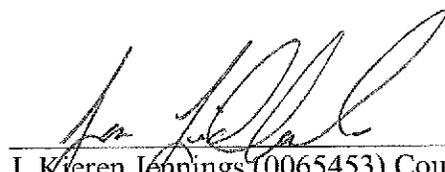
¹⁵ This proposition of law directly addresses Assignment of Error No. 3 in Appellant's Notice of Appeal.

are subject to differing systems of valuation by a County Auditor and the state. As such, the constitutional requirement that land and improvements be taxed by uniform rule according to value is violated when the laws governing the assessment of real estate, specifically, R.C. 5713.01(B), are not applied in a manner consistent with the Ohio Constitution.

CONCLUSION

For the foregoing reasons, Appellant, AERC Sawmill Village, Inc., respectfully requests that this Court reverse the decision and order of the Ohio Board of Tax Appeals, and issue an order remanding this matter with instructions to determine the value of the subject property for 2005 and 2006 based upon the Auditor's 2005 certified value of \$17,900,000.

Respectfully submitted,

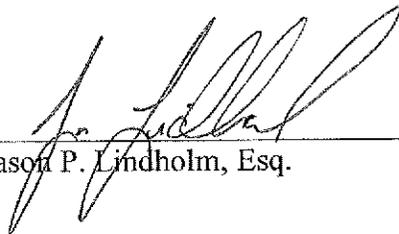


J. Kieren Jennings (0065453) Counsel of Record
Jason P. Lindholm (0077776)
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3001 Bethel Road, Suite 208
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(614) 442-8885

Counsel for Appellant, AERC Saw Mill
Village, Inc.

CERTIFICATE OF SERVICE

This is to certify that on this 18th day of February 2010, a copy of the Merit Brief of Appellant AERC Saw Mill Village, Inc., Appendix to the Merit Brief of Appellant AERC Saw Mill Village, Inc., and Supplement to the Merit Brief of Appellant AERC Saw Mill Village, Inc. was sent via regular U.S. 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.



Jason P. Lindholm, Esq.

COUNSEL FOR APPELLANT
AERC SAW MILL VILLAGE, INC.

IN THE SUPREME COURT OF OHIO

AERC Saw Mill Village, Inc.,)	
	)	Case No. 2009-1765
Appellant,)	
)	
vs.)	
)	
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

APPENDIX TO THE MERIT BRIEF OF APPELLANT AERC SAWMILL VILLAGE, INC.

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Counsel for Appellee
Richard A. Levin, Tax
Commissioner of Ohio

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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Commissioner of Ohio

FILED
OCT 1 2009
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SUPREME COURT OF OHIO

FILED
OCT 1 2009
BOARD OF TAX APPEALS
COLUMBUS, OHIO

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IN THE SUPREME COURT OF OHIO

AERC Saw Mill Village, Inc.,)	
)	Case No. _____
Appellant,)	
)	
vs.)	
)	
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:

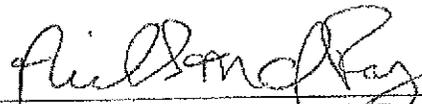
The Decision and Order of the Board of Tax Appeals is unreasonable, unlawful and arbitrary because the Board of Tax Appeals erroneously and unjustifiably affirmed a tax year 2006 valuation that was based upon a 2002 valuation stipulation rather than the 2005 tax year value certified by the county auditor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

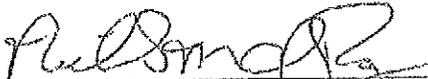


Nicholas M.J. Ray (0068664) Counsel of Record
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3001 Bethel Rd., Suite 208
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Tel: (614) 442-8885
Fax: (614) 442-8880

COUNSEL FOR APPELLANT
AERC SAW MILL VILLAGE, INC.

**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.

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)
 Education of the Dublin City Schools) DECISION AND ORDER
 District,)
)
 Appellees.)

APPEARANCES:

For the Appellant - Siegel Siegel Johnson & Jennings Co., LPA
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Columbus, Ohio 43220

For the County Appellees - Ron O'Brien
Franklin County Prosecuting Attorney
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For the Appellee Bd. of Edn. - Rich & Gillis Law Group, LLC
Mark H. Gillis
300 East Broad Street, Suite 300
Columbus, Ohio 43215

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. Sweiland 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:

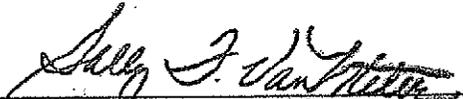
	TRUE VALUE	TAXABLE VALUE
Land	\$ 2,448,000	\$ 856,800
Bldg	17,652,000	6,178,200
Total	\$20,100,000	\$ 7,035,000

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.

ohiosearchkeybta


Sally F. Van Meter, Board Secretary

Board of Revision

7492^F-2005

Franklin County • Ohio

JANUARY 4, 2008

AERC SAWMILL VILLAGE, INC.
C/O SUSAN MORAN
5025 SWETLAND CT.
RICHMOND HEIGHTS, OH 44143

Mary Jo Kilroy
Commissioner

Edward J. Leonard
Treasurer

Joseph W. Testa
Auditor

Victoria K. Anthony
Clerk

Complaint No: BOR 02-694 A&B
Parcel: 590-205287
Hearing Date: DECEMBER 6, 2007

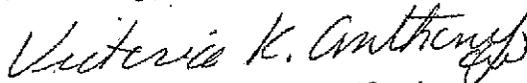
After consideration of the above Complaint, it is the decision of the Board of Revision the valuation will remain unchanged for tax lien date January 1, 2005.

The property's fair market value will remain \$20,100,000. The taxable value is 35% or \$7,035,000.

You may appeal this decision by filing the proper notice of appeal with either the Ohio Board of Tax Appeals, (O.R.C. 5717.01), or with the Court of Common Pleas, (O.R.C. 5717.05). Such appeals must be filed within 30 days after the mailing of this notice.

Please call (614) 462-3913 if we can be of further assistance.

Sincerely,


Victoria K. Anthony, Clerk
Franklin County Board of Revision

VKA:bn

CC: JEFFREY A. RICH, ESQ.
NICHOLAS RAY, ESQ.

Board of Revision

7492-2006

Franklin County • Ohio

JULY 18, 2007

AERC SAW MILL VILLAGE INC
C/O SUSAN MORAN
5025 SWETLAND CT.
CLEVELAND, OH 44143

Complaint No: BOR 06-891 A&B
Parcel: 590-205287
Hearing Date: JULY 13, 2007

Mary Jo Kilroy
Commissioner

Edward J. Leonard
Treasurer

Joseph W. Testa
Auditor

Victoria K. Anthony
Clerk

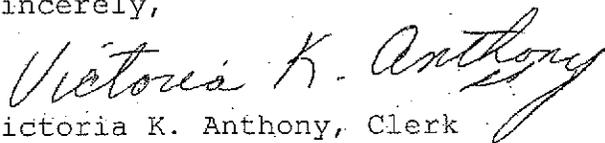
After consideration of the above Complaint, it is the decision of the Board of Revision the valuation will remain unchanged for tax lien date January 1, 2006.

The property's fair market value will remain \$20,100,000. The taxable value is 35% or \$7,035,000.

You may appeal this decision by filing the proper notice of appeal with either the Ohio Board of Tax Appeals, (O.R.C. 5717.01), or with the Court of Common Pleas, (O.R.C. 5717.05). Such appeals must be filed within 30 days after the mailing of this notice.

Please call (614) 462-3913 if we can be of further assistance.

Sincerely,



Victoria K. Anthony, Clerk
Franklin County Board of Revision

VKA:bn

CC: JEFFREY A. RICH, ESQ.
NICHOLAS RAY, ESQ.

Article [V.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, (*See Note 15*) and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE I: BILL OF RIGHTS

ing the place to be searched and the person and things to be seized.

(1851)

NO IMPRISONMENT FOR DEBT.

§15 No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud.

(1851)

REDRESS FOR INJURY; DUE PROCESS.

§16 All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

(1851, am. 1912)

NO HEREDITARY PRIVILEGES.

§17 No hereditary emoluments, honors, or privileges, shall ever be granted or conferred by this State.

(1851)

SUSPENSION OF LAWS.

§18 No power of suspending laws shall ever be exercised, except by the General Assembly.

(1851)

EMINENT DOMAIN.

§19 Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.

(1851)

DAMAGES FOR WRONGFUL DEATH.

§19a The amount of damages recoverable by civil action in the courts for death caused by the wrongful act, neglect, or default of another, shall not be limited by law.

(1912)

PROTECT PRIVATE PROPERTY RIGHTS IN GROUND WATER, LAKES AND OTHER WATERCOURSES.

§ 19b. (A) The protection of the rights of Ohio's property owners, the protection of Ohio's natural resources, and the maintenance of the stability of Ohio's economy require the recognition and protection of property interests in ground water, lakes, and watercourses.

(B) The preservation of private property interests recognized under divisions (C) and (D) of this section shall be held inviolate, but subservient to the public welfare as provided in Section 19 of Article I of the Constitution.

(C) A property owner has a property interest in the reasonable use of the ground water underlying the property owner's land.

(D) An owner of riparian land has a property interest in the reasonable use of the water in a lake or watercourse located on or flowing through the owner's riparian land.

(E) Ground water underlying privately owned land and nonnavigable waters located on or flowing through privately owned land shall not be held in trust by any governmental body. The state, and a political subdivision to the extent authorized by state law, may provide for the regulation of such waters. An owner of land voluntarily may convey to a governmental body the owner's property interest held in the ground water underlying the land or nonnavigable waters located on or flowing through the land.

(F) Nothing in this section affects the application of the public trust doctrine as it applies to Lake Erie or the navigable waters of the state.

(G) Nothing in Section 1e of Article II, Section 36 of Article II, Article VIII, Section 1 of Article X, Section 3 of Article XVIII, or Section 7 of Article XVIII of the Constitution shall impair or limit the rights established in this section.

(2008)

POWERS RESERVED TO THE PEOPLE.

§20 This enumeration of rights shall not be construed to impair or deny others retained by the people, and all powers, not herein delegated, remain with the people.

(1851)

ARTICLE XII: FINANCE AND TAXATION

will not expire within two years of the time the plan of apportionment is made shall represent, for the remainder of the term for which he was elected, the Senate district which contains the largest portion of the population of the district from which he was elected, and the district shall be given the number of the district from which the senator was elected. If more than one senator whose term will not so expire would represent the same district by following the provisions of this section, the persons responsible for apportionment, by a majority of their number, shall designate which senator shall represent the district and shall designate which district the other senator or senators shall represent for the balance of their term or terms.

(1967)

JURISDICTION OF SUPREME COURT, EFFECT OF DETERMINATION OF UNCONSTITUTIONALITY; APPORTIONMENT.

§13 The Supreme Court of Ohio shall have exclusive, original jurisdiction in all cases arising under this Article. In the event that any section of this constitution relating to apportionment or any plan of apportionment made by the persons responsible for apportionment, by a majority of their number, is determined to be invalid by either the Supreme Court of Ohio, or the Supreme Court of the United States, then notwithstanding any other provisions of this constitution, the persons responsible for apportionment by a majority of their number shall ascertain and determine a plan of apportionment in conformity with such provisions of this constitution as are then valid, including establishing terms of office and election of members of the General Assembly from districts designated in the plan, to be used until the next regular apportionment in conformity with such provisions of this constitution as are then valid.

Notwithstanding any provision of this constitution or any law regarding the residence of senators and representatives, a plan of apportionment made pursuant to this section shall allow thirty days for persons to change residence in order to be eligible for election. The governor shall give the persons responsible for apportionment two weeks advance written notice of the date, time, and place of any meeting held pursuant to this section.

(1967)

CONTINUATION OF PRESENT DISTRICT BOUNDARIES.

§14 The boundaries of House of Representatives districts and Senate districts from which representatives and senators were elected to the 107th General Assembly shall be the boundaries of House of Representatives and Senate districts until January 1, 1973, and representatives and senators elected in the general election in 1966 shall hold office for the terms to which they were elected. In the event all or any part of this apportionment plan is held invalid prior to the general election in the year 1970, the persons responsible for apportionment by a majority of their number shall ascertain and determine a plan of apportionment to be effective until January 1, 1973, in accordance with section 13 of this Article.

(1967)

SEVERABILITY PROVISION.

§15 The various provisions of this Article XI are intended to be severable, and the invalidity of one or more of such provisions shall not affect the validity of the remaining provisions.

(1967)

ARTICLE XII: FINANCE AND TAXATION

POLL TAXES PROHIBITED.

§1 No poll tax shall ever be levied in this state, or service required, which may be commuted in money or other thing of value.

(1851, am. 1912)

LIMITATION ON TAX RATE; EXEMPTION.

§2 No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value, except that laws may be passed to reduce taxes by providing for a reduction in value of the homestead of permanently and totally disabled residents, residents sixty-five years of age and older, and residents sixty years of age or older who are sur-

ARTICLE XII: FINANCE AND TAXATION

viving spouses of deceased residents who were sixty-five years of age or older or permanently and totally disabled and receiving a reduction in the value of their homestead at the time of death, provided the surviving spouse continues to reside in a qualifying homestead, and providing for income and other qualifications to obtain such reduction. Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

(1851, am. 1906, 1912, 1918,
1929, 1933, 1970, 1974, 1990)

*AUTHORITY TO CLASSIFY REAL ESTATE FOR TAXATION;
PROCEDURES.*

§2a (A) Except as expressly authorized in this section, land and improvements thereon shall, in all other respects, be taxed as provided in Section 36, of Article II and Section 2 of this article

(B) This section does not apply to any of the following:

(1) Taxes levied at whatever rate is required to produce a specified amount of tax money or an amount to pay debt charges;

(2) Taxes levied within the one per cent limitation imposed by Section 2 of this article;

(3) Taxes provided for by the charter of a municipal corporation.

(C) Notwithstanding Section 2 of this article, laws may be passed that provide all of the following:

(1) Land and improvements thereon in each taxing district shall be placed into one of two classes solely for the purpose of separately reducing the taxes charged against all land and improvements in each of the two classes as provided in division (C)(2) of this section. The classes shall be:

- (a) Residential and agricultural land and improvements;
- (b) All other land and improvements.

(2) With respect to each voted tax authorized to be levied by each taxing district, the amount of taxes imposed by such tax against all land and improvements thereon in each class shall be reduced in order that the amount charged for collection against all land and improvements in that class in the current year, exclusive of land and improvements not taxed by the district in both the preceding year and in the current year and those not taxed in that class in the preceding year, equals the amount charged for collection against such land and improvements in the preceding year.

(D) Laws may be passed to provide that the reductions made under this section in the amounts of taxes charged for the current expenses of cities, townships, school districts, counties, or other taxing districts are subject to the limitation that the sum of the amounts of all taxes charged for current expenses against the land and improvements thereon in each of the two classes of property subject to taxation in cities, townships, school districts, counties, or other types of taxing districts, shall not be less than a uniform per cent of the taxable value of the property in the districts to which the limitation applies. Different but uniform percentage limitations may be established for cities, townships, school districts, counties, and other types of taxing districts.

(1980)

IMPOSITION OF TAXES.

§3 Laws may be passed providing for:

(A) The taxation of decedents' estates or of the right to receive or succeed to such estates, and the rates of such taxation may be uniform or may be graduated based on the value of the estate, inheritance, or succession. Such tax may also be levied at different rates upon collateral and direct inheritances, and a portion of each estate may be exempt from such taxation as provided by law.

(B) The taxation of incomes, and the rates of such taxation may be either uniform or graduated, and may be applied to such incomes and with such exemptions as may be provided by law.

(C) Excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas, and other minerals; except that no excise tax shall be levied or collected upon the sale or purchase of food for human consumption off the premises where sold.

(1976)

Chapter 5713: ASSESSING REAL ESTATE

5713.01 County auditor shall be assessor - assessment procedure - employees.

(A) Each county shall be the unit for assessing real estate for taxation purposes. The county auditor shall be the assessor of all the real estate in the auditor's county for purposes of taxation, but this section does not affect the power conferred by Chapter 5727. of the Revised Code upon the tax commissioner regarding the valuation and assessment of real property used in railroad operations.

(B) The auditor shall assess all the real estate situated in the county at its taxable value in accordance with sections 5713.03, 5713.31, and 5715.01 of the Revised Code and with the rules and methods applicable to the auditor's county adopted, prescribed, and promulgated by the tax commissioner. The auditor shall view and appraise or cause to be viewed and appraised at its true value in money, each lot or parcel of real estate, including land devoted exclusively to agricultural use, and the improvements located thereon at least once in each six-year period and the taxable values required to be derived therefrom shall be placed on the auditor's tax list and the county treasurer's duplicate for the tax year ordered by the commissioner pursuant to section 5715.34 of the Revised Code. The commissioner may grant an extension of one year or less if the commissioner finds that good cause exists for the extension. When the auditor so views and appraises, the auditor may enter each structure located thereon to determine by actual view what improvements have been made therein or additions made thereto since the next preceding valuation. The auditor shall revalue and assess at any time all or any part of the real estate in such county, including land devoted exclusively to agricultural use, where the auditor finds that the true or taxable values thereof have changed, and when a conservation easement is created under sections 5301.67 to 5301.70 of the Revised Code. The auditor may increase or decrease the true or taxable value of any lot or parcel of real estate in any township, municipal corporation, or other taxing district by an amount which will cause all real property on the tax list to be valued as required by law, or the auditor may increase or decrease the aggregate value of all real property, or any class of real property, in the county, township, municipal corporation, or other taxing district, or in any ward or other division of a municipal corporation by a per cent or amount which will cause all property to be properly valued and assessed for taxation in accordance with Section 36, Article II, Section 2, Article XII, Ohio Constitution, this section, and sections 5713.03, 5713.31, and 5715.01 of the Revised Code.

**5715.19 Complaint against valuation or assessment -
determination of complaint - tender of tax -
determination of common level of assessment.**

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

(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;

5715.19 Complaint against valuation or assessment - determination of complaint - tender of tax - determination of common level of assessment.

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

(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.

(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.

5717.05 Appeal from decision of county board of revision to court of common pleas - notice - transcript - judgment.

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

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

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

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

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

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

Effective Date: 03-17-1989