

ORIGINAL

IN THE SUPREME COURT OF OHIO

AERC Saw Mill Village, Inc., :  
Appellant, : Case No. 2009-1765  
v. :  
Franklin County Board of Revision, et al., : Appeal from the Ohio Board of  
Appellees. : Tax Appeals - Case Nos.  
2007-A-764 and 2008-A-157

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**MERIT BRIEF OF APPELLEE BOARD OF EDUCATION OF THE  
DUBLIN CITY SCHOOL DISTRICT**

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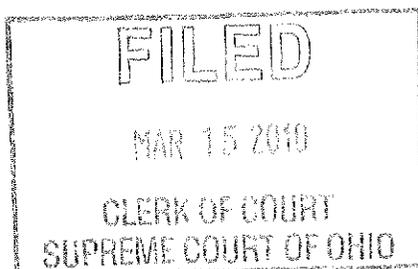
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## TABLE OF CONTENTS

Table of Authorities .....	iii
Statement of the Case and Facts .....	1
Law and Argument .....	3
Introduction.....	3
<i>State v. Lowe</i> , 112 Ohio St.3d 507, 2007-Ohio-606 .....	3
<i>Hal Artz Lincoln-Mercury, Inc. v. Ford Motor Co.</i> (1986), 28 Ohio St.3d 20 .....	4
<u>Proposition of Law No. 1:</u>	
The Carryover Value Provisions Of R.C. 5715.19(D) Are Plain And Unambiguous, And Must Be Applied In Accordance With The Clear Meaning Of The Language. ....	4
R.C. 5715.19(D).....	4
<i>Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision</i> (1999), 87 Ohio St.3d 305.....	6
R.C. 5715.19(D).....	6
<i>Portage Cty. Bd. of Commrs. v. Akron</i> , 109 Ohio St.3d 106, 2006-Ohio-954 .....	7
<i>State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Edn.</i> (1996), 74 Ohio St.3d 543 .....	7
<i>Kraynak v. Youngstown City School Dist. Bd. of Edn.</i> , 118 Ohio St.3d 400, 2008-Ohio-2618 .....	7
<u>Proposition of Law No. 2:</u>	
There Is No Conflict Between The Carryover Value Provisions of R.C. 5715.19(D) And The Requirement That Real Property Be Reappraised Under R.C. 5713.01.....	8
R.C. 5713.01 .....	8
<i>State ex rel. McDulin v. Indus. Comm.</i> (2000), 89 Ohio St.3d 390 .....	8
<i>Cleveland Elec. Illum. Co. v. Cleveland</i> (1988), 37 Ohio St.3d 50 .....	8
<i>Columbus Suburban Coach Lines v. Pub. Util. Comm.</i> (1969), 20 Ohio St.2d 125 .....	8

<i>Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision</i> (1999), 87 Ohio St.3d 305; 1999-Ohio-69 .....	9
<i>Cleveland Mun. Sch. Dist. Bd. of Educ. v. Cuyahoga County Bd. of Revision</i> , 105 Ohio St. 3d 404; 2005 Ohio 2285 .....	9
<i>Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision</i> (1996), 74 Ohio St. 3d 639.....	10
<i>Concord Columbus, L.P. v. Joseph W. Testa, Auditor, Franklin County, et al.</i> (1997), 122 Ohio App. 3d 205.....	11
<i>Oberlin Manor, Ltd. v. Lorain County Board of Revision et al.</i> (1994), 69 Ohio St. 3d 1; 94 Ohio 500.....	11

Proposition of Law No. 3:

A Complainant Before A County Board Of Revision And An Appellant Before The BTA Has The Burden To Prove The True Value Of The Property. ....	13
<i>Kalmbach Wagner Swine Research Farm v. Board of Revision</i> , 81 Ohio St. 3d 319; 1998-Ohio- 475.....	13
<i>Fogg-Akron Assoc., L.P. v. Summit Cty. Bd. of Revision</i> , 124 Ohio St.3d 112, 2009-Ohio- 6412.....	13
<i>Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision</i> , 124 Ohio St.3d 27, 2009-Ohio-5932 .....	14
<i>Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision</i> (2001), 90 Ohio St.3d 564.....	14
<i>Hibschman v. Bd. of Tax Appeals</i> (1943), 142 Ohio St. 47 .....	14
<i>Colonial Village, Ltd. v. Washington Cty. Bd. of Revision</i> , 123 Ohio St.3d 268, 2009-Ohio- 4975.....	15

Proposition of Law No.4:

The Carryover Value Provisions Of R.C. 5715.19(D) Are Not Unconstitutional.....	15
Article XII, Section 2, of the Ohio Constitution.....	16
Conclusion .....	16
Certificate of Service .....	17

Appendix.....	18
R.C. 5717.03 .....	18

**TABLE OF AUTHORITIES**

Cases:

<i>Cleveland Elec. Illum. Co. v. Cleveland</i> (1988), 37 Ohio St.3d 50 .....	8
<i>Cleveland Mun. Sch. Dist. Bd. of Educ. v. Cuyahoga County Bd. of Revision</i> , 105 Ohio St. 3d 404, 2005 Ohio 2285.....	9
<i>Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision</i> (1996), 74 Ohio St. 3d 639.....	10
<i>Columbus Suburban Coach Lines v. Pub. Util. Comm.</i> (1969), 20 Ohio St.2d 125.....	8
<i>Colonial Village, Ltd. v. Washington Cty. Bd. of Revision</i> , 123 Ohio St.3d 268, 2009-Ohio-4975.....	15
<i>Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision</i> (1999), 87 Ohio St.3d 305; 1999-Ohio-69.....	6, 9
<i>Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision</i> (2001), 90 Ohio St.3d 564.....	14
<i>Concord Columbus, L.P. v. Joseph W. Testa, Auditor, Franklin County, et al.</i> (1997), 122 Ohio App. 3d 205.....	11
<i>Fogg-Akron Assoc., L.P. v. Summit Cty. Bd. of Revision</i> , 124 Ohio St.3d 112, 2009-Ohio-6412.....	13
<i>Hal Artz Lincoln-Mercury, Inc. v. Ford Motor Co.</i> (1986), 28 Ohio St.3d 20.....	4
<i>Hibschman v. Bd. of Tax Appeals</i> (1943), 142 Ohio St. 47 .....	14
<i>Kalmbach Wagner Swine Research Farm v. Board of Revision</i> , 81 Ohio St. 3d 319; 1998 Ohio 475.....	13
<i>Kraynak v. Youngstown City School Dist. Bd. of Edn.</i> , 118 Ohio St.3d 400, 2008-Ohio-2618 .....	7
<i>Oberlin Manor, Ltd. v. Lorain County Board of Revision et al.</i> (1994), 69 Ohio St. 3d 1; 1994 Ohio 500 .....	11

<i>Portage Cty. Bd. of Commrs. v. Akron</i> , 109 Ohio St.3d 106, 2006-Ohio-954 .....	7
<i>State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Edn.</i> (1996), 74 Ohio St.3d 543 .....	7
<i>State v. Lowe</i> , 112 Ohio St.3d 507, 2007-Ohio-606 .....	3
<i>State ex rel. McDulin v. Indus. Comm.</i> (2000), 89 Ohio St.3d 390 .....	8
<i>Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision</i> , 124 Ohio St.3d 27; 2009-Ohio-5932 .....	14

Constitution and Statutes:

Article XII, Section 2, of the Ohio Constitution.....	16
R.C. 5713.01 .....	8
R.C. 5715.19(D).....	4, 6
R.C. 5717.03 .....	9

## STATEMENT OF THE CASE AND FACTS

This appeal involves the determination of the true value in money of Appellant's real property for tax year 2005 and tax year 2006. The property is a 340-unit apartment complex located in the Sawmill Road and State Route 161 area.

1. The Tax Year 2002 Stipulation - The parties involved in the present appeal were also involved in a prior appeal to the BTA involving this same property for tax year 2002 (BTA Case No. 2005-M-377). To resolve the prior litigation, the parties submitted a written "Stipulation" to the BTA on August 25, 2006, the relevant part of which provided that the value agreed to by the parties for tax year 2002 would be "carried forward" in accordance with law, which is a common reference to the carryover value provisions set forth in R.C. 5715.19(D). The stipulation agreed to by the parties stated as follows: "It is further stipulated that such values be carried forward according to law" (Appellee's Supplement, p. 1). The Stipulation set forth an agreed upon true value of \$20,100,000 for Appellant's property for tax year 2002 (a taxable value of \$7,035,000).

Based on this stipulation, on September 1, 2006, the BTA issued an order in which it determined the true and taxable value of Appellant's property to be \$20,100,000 and \$7,035,000, respectively, and the BTA incorporated into its decision the stipulated carryover value language ("It is further stipulated that such values be carried forward according to law"). The last sentence of the BTA's decision stated: "It is further ordered that the stipulated values be carried forward according to law" (Appellant's Supplement, p. 14).

2. BOR Litigation For Tax Year 2005 and 2006 - Because the BTA's decision was rendered in September, 2006, it applied to tax year 2005, and the County Auditor valued the property at \$20,100,000 for tax year 2005 under the carryover value provisions of R.C. 5715.19(D). The County Auditor had not, at that time, prepared the tax list and duplicate for tax

year 2006 (which is prepared after all tax rates have been fixed following the November election in 2006), and the Auditor subsequently determined that the true value of the property was also \$20,100,000 for tax year 2006. Because Appellant objected to the value of \$20,100,000 for tax year 2005, and because Appellant had a “continuing complaint” for tax year 2005 pending before the Board of Revision (BOR) under R.C. 5715.19(D), Appellant demanded a hearing on the 2005 value of its property. Appellant also filed a new complaint for tax year 2006 and the Board of Education filed a counter-complaint.

The BOR heard the tax year 2006 complaint first, on June 1, 2007. However, Appellant refused to present any evidence of the true value of its property to the BOR. The BOR issued a decision on July 13, 2007, in which it determined that the true value of Appellant’s property “will remain \$20,100,000” which was the County Auditor’s original value for the property for tax year 2006. Appellant then appealed this decision to the BTA (BTA Case No. 2007-A-764). Appellant was also given a hearing on its continuing complaint for tax year 2005, and once again it refused to present any evidence of the true value of its property to the BOR. In the absence of any evidence to the contrary, the Board of Revision determined that the true value of Appellant’s property was \$20,100,000 for tax year 2005 in a decision issued on December 6, 2007 (Appellant’s Supplement, p. 5). Appellant also appealed this decision to the BTA (BTA Case No. 2008-A-157).

At the BTA, Appellant argued, as a matter of law, that the true value of its property was not \$20,100,000 for tax year 2005 or 2006. In the absence of any evidence to the contrary, the BTA rejected this argument and properly affirmed the two decisions of the Board of Revision, holding that the true value of Appellant’s property was \$20,100,000 for tax year 2005 and 2006. Appellant then appealed to this Court.

## LAW AND ARGUMENT

### Introduction

Appellant claims that the BTA erred as a matter of law in affirming the use of the carryover value of \$20,100,000 as the true value of its property for tax year 2005, and in affirming that value for tax year 2006. This appeal should be resolved by a straight-forward application of the plain language of the carryover value provisions and the plain language of the continuing complaint provisions for tax year 2005, coupled with the standard burden of proof rules that apply to all board of revision complaints.

Under the plain language of the carryover value provisions R.C. 5715.19(D), the County Auditor was required to apply the carryover value of \$20,100,000 to Appellant's property for tax year 2005. Under the plain language of the continuing complaint provisions of R.C. 5715.19(D), Appellant had a continuing complaint pending before the BOR for tax year 2005. When Appellant contested the value for tax year 2005, Appellant had the burden to prove that the true value of its property was something other than \$20,100,000. Appellant failed to carry that burden, and the BOR and the BTA properly affirmed that value for tax year 2005.

Appellant has no reasonable basis in this appeal for claiming that the carryover value provisions of R.C. 5715.19(D) did not apply its property for tax year 2005. The BTA was required to apply the "plain language" of R.C. 5715.19(D) because that language "is clear and unambiguous." See *State v. Lowe*, 112 Ohio St.3d 507, 2007-Ohio-606, 861 N.E.2d 512. Furthermore, no party to this appeal had any reasonable basis for objecting to the application of the carryover value to tax year 2005 because each party automatically had a "continuing complaint" pending before the Franklin County Board of Revision for tax year 2005 under R.C. 5715.19(D), which could be used to contest the carryover value for tax year 2005.

Finally, Appellant cannot object to the BTA's reliance on the carryover value provisions of R.C. 5715.19(D) because Appellant signed a stipulation of value that was submitted to the BTA that specifically provided that "[i]t is further stipulated that such values be carried forward according to law." If Appellant did not wish to have the stipulated values carried forward by the County Auditor and the Board of Revision for tax year 2005, then why did Appellant agree to the stipulation that required the values to be carried forward? If the BTA's reliance on the carryover value was an error, then Appellant invited that error and Appellant may not "take advantage of an error which [it] invited or induced." *Hal Artz Lincoln-Mercury, Inc. v. Ford Motor Co.* (1986), 28 Ohio St.3d 20, 28 OBR 83, 502 N.E.2d 590, paragraph one of the syllabus.

As to tax year 2006, Appellant filed a new complaint for tax year 2006, and, likewise, Appellant had the burden to prove that the true value was something other than the Auditor's initial value of \$20,100,000 for tax year 2006. Once again, Appellant failed to present any evidence to the BOR or to the BTA as to the true value of its property, and both the BOR and BTA properly affirmed the value of \$20,100,000 for tax year 2006.

**Proposition of Law No. 1:**

The Carryover Value Provisions Of R.C. 5715.19(D) Are Plain And Unambiguous, And Must Be Applied In Accordance With The Clear Meaning Of The Language.

The carryover value of \$20,100,000 was required to be used as the true value of Appellant's property for tax year 2005. This was required by the plain meaning of R.C. 5715.19(D), and it was also required by the Stipulation entered into by Appellant and submitted to and adopted by the BTA in the 2002 appeal.

The carryover value provisions of R.C. 5715.19(D) read, in part, as follows:

“(D) The determination of any such [board of revision] complaint shall relate back to the date when the lien for taxes \*\*\* for the current year attached \*\*\*. Liability for taxes \*\*\* 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.”

Under the plain meaning of this language, the BTA’s “determination” of the true value of Appellant’s property for tax year 2002, which was made on September 1, 2006, applied to tax year 2005. The BTA’s “valuation” or “determination” of value was made in August, 2006, and tax year 2005, which is at issue here, was clearly a “succeeding year until the complaint is finally determined” under the second sentence of R.C. 5715.19(D). According to this provision, the value of the property (upon which the liability for taxes is based) for tax year 2005 “shall be based upon the determination, valuation, or assessment as finally determined.” The “valuation \*\*\* finally determined” was \$20,100,000. That value was properly applied to tax year 2005. There is nothing unclear or vague about this language and it was properly applied by all of the taxing authorities involved in this appeal.

The carryover value provisions are the practical solution by the Ohio General Assembly to the problem of how to determine value for the “succeeding” and “ensuing” tax years during which a complaint or appeal is actively being litigated. The carryover value provisions are designed to benefit a property owner by providing that a value determined during the course of a board of revision or BTA proceeding will apply to these intervening tax years. Because of the carryover value provisions, the property owner need not continually litigate the value of the property during the “succeeding” and “ensuing” tax years until a value is “finally determined.”

No party to a board of revision proceeding has a reasonable basis for objecting to a carryover value because, as a fail-safe device, the parties have a “continuing complaint” for each and every year to which the carryover value applies. Both the carryover value and the continuing complaint always apply to the same tax years. Under R.C. 5715.19(D), the carryover value applies to “each succeeding year until the complaint is finally determined” and the continuing complaint is “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.” Thus, any party that does not believe that the carryover value is the correct true value of the property for a “succeeding year” or “for any ensuing year” may prosecute the continuing complaint. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 305, 307-308; 1999-Ohio-69; 720 N.E.2d 517.

The “continuing complaint” provisions of R.C. 5715.19(D) read, in part, as follows: “If a complaint filed under this section for the current year is not determined by the board [of revision] 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.”

In the appeal at hand, Appellant demanded and was given two hearings in which to contest the true value of its property, one for tax year 2005 and one for tax year 2006. However, Appellant failed in each case to present any evidence of value.

The language of both the carryover value provisions and the continuing complaint provisions of R.C. 5715.19(D) are plain and clear. This Court has consistently held that “[w]e apply a statute as it is written when its meaning is unambiguous and definite. *Portage Cty. Bd. of Commrs. v. Akron*, 109 Ohio St.3d 106, 2006-Ohio-954, ¶52, citing *State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Edn.* (1996), 74 Ohio St.3d 543, 545, 660 N.E.2d 463.” This Court has also consistently stated that “[a]n unambiguous statute must be applied in a manner consistent with the plain meaning of the statutory language. *State ex rel. Burrows*, 78 Ohio St.3d at 81, 676 N.E.2d 519.” See also *Kraynak v. Youngstown City School Dist. Bd. of Edn.*, 118 Ohio St.3d 400, 2008-Ohio-2618, ¶10.

Appellant appears to concede that the plain meaning of R.C. 5715.19(D) made the carryover value applicable to Appellant’s property for tax year 2005. In other words, Appellant concedes that tax year 2005 was, in fact, a “succeeding year until the complaint is finally determined” and “any ensuing year until such complaint is finally determined” under R.C. 5715.19(D). Appellant does not claim that the carryover value provisions are ambiguous or vague. Instead, Appellant claims that the BTA “blindly” applied the statute in question (which is no criticism in itself) and this “produced an artificial value not grounded in principles of valuation.” (Appellant’s Merit Brief, p. 7). That a “value not grounded in principles of valuation” may have been produced is an argument that Appellant should direct to the Ohio General Assembly, and not to this Court, because the General Assembly determined that a carryover value constitutes sound public policy which was designed to benefit property owners.

**Proposition of Law No. 2:**

There Is No Conflict Between The Carryover Value Provisions of R.C. 5715.19(D) And The Requirement That Real Property Be Reappraised Under R.C. 5713.01.

Appellant's primary claim is that the carryover value requirement is bad legislative policy because it conflicts with the reappraisal requirements of R.C. 5713.01, which require a county auditor to view and appraisal all real property once in each six-year period. According to Appellant, the use of a carryover value in the present appeal was a "violation of the county auditor's statutory duty to reappraise" real property as required by R.C. 5713.01 (Merit Brief, p. 4). To resolve this purported statutory conflict, Appellant then requests this Court to rewrite the carryover value requirement so that it does not apply to certain tax years, for instance, a year of a six-year reappraisal (according to Appellant, "a sexennial reappraisal should terminate any 'carry-forward' of a prior value" - Merit Brief, p. 11). There is no basis for this claim.

It is obvious that if the General Assembly had wished to incorporate such an exception into the carryover value requirement then it clearly could have done so. R.C. 5715.19(D) makes no distinction in the years to which the carryover value (or the continuing complaint) applies, so long as the tax year is a "succeeding" and a "ensuing" year under R.C. 5715.19(D). This Court has noted many times that "[o]ur duty is to construe the statutes as written" and "[i]t is well recognized that a court cannot read words into a statute, but must give effect to the words used in the statute." See generally *State ex rel. McDulin v. Indus. Comm.* (2000), 89 Ohio St.3d 390, 392, 732 N.E.2d 367; *Cleveland Elec. Illum. Co. v. Cleveland* (1988), 37 Ohio St.3d 50, 524 N.E.2d 441, paragraph three of the syllabus, citing *Columbus Suburban Coach Lines v. Pub. Util. Comm.* (1969), 20 Ohio St.2d 125, 127, 49 O.O.2d 445, 254 N.E.2d 8.

Furthermore, there is no conflict between the carryover value provisions and the county auditor's duty to reappraise real property. A carryover value is created by R.C. 5715.19, which deals with values determined by a county board of revision or on appeal by the BTA, and a value determined by a board of revision or as a result of a BTA appeal always overrides a value determined in the first instance by the county auditor. R.C. 5717.03(F) expressly states that "[w]hen an order of the [BTA] becomes final \*\*\* all officers to whom such decision has been certified shall make the changes in their tax lists or other records which the decision requires." The General Assembly was obviously aware of the requirement in R.C. 5713.01 that a county auditor view and appraise real property once in each six-year period, but the General Assembly nonetheless determined that a carryover value should override a value determined by a county auditor under R.C. 5713.01. Any party who disputes the carryover value can present appraisal evidence in a hearing on the continuing complaint. A carryover value cannot, therefore, impermissibly "interfer[] with a statutorily mandated reappraisal period" as claimed by Appellant (Merit Brief, p. 9).

Appellant is forced to acknowledge that this Court has already recognized that a carryover value carries forward to a tax year that constituted the first year of a new three-year appraisal cycle, and is coupled with a continuing complaint that gives a board of revision the jurisdiction to review that value. In the *Inner City Catholic Parishes* case (*Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 305, 307-308, 1999-Ohio-69; 720 N.E.2d 517) and in the *Royal Financing* case (*Cleveland Mun. Sch. Dist. Bd. of Educ. v. Cuyahoga County Bd. of Revision*, 105 Ohio St. 3d 404, 2005 Ohio 2285, 827 N.E.2d 306), this Court recognized that a carryover value should apply to "the first year of the next triennium" (see *Cleveland Mun. Sch. Dist. Bd. of Educ.* [P19]). In both of these cases, "the first year of the next

triennium” was a year of a triennial update, and not a year of a six-year reappraisal, although this clearly made no difference to this Court in both cases. In *Inner City*, this Court stated that “[t]he auditor should have automatically carried over the 1993 value determined in 1996 by the BTA for tax year 1996” (87 Ohio St.3d, at 307, 720 N.E.2d, at 519), with tax year 1996 being the first year of a new triennial update. In *Royal Financing*, this Court stated that Royal Financing had “continuing complaints for 1997 and 1998 [which] remain open until the auditor has complied with the January 30, 1998 order of the BTA” [P23], and the “order” in question was to carryover the value determined for 1994 to tax years 1997 and 1998, which were the first two years of a new three-year update.

The same thing was set forth in *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1996), 74 Ohio St. 3d 639, 660 N.E.2d 1179, where this Court stated that a carryover value continues over a new “triennium” (three-year appraisal cycle) and that only the filing of a brand new complaint will stop the carryover of the value determined in the prior litigation. This Court stated the following in this respect:

“Thus, the filing of a valid new complaint in the second triennium stops, for the tax year at issue and succeeding years, the automatic carryover of the value determined under a prior complaint. [pp. 642-643]

“The filing of the valid new complaint in the second triennium will require a new determination of value by the board of revision, and that determination shall relate back to the date when the lien for taxes or recoupment charges for the year in question attach or the date as of which the liability for the year was determined.” [p. 643]

Appellant attempts to distinguish these decisions by noting that the year to which the carryover value was applied in each case was a year of a new three-year or triennial update of

values under R.C. 5713.01 and R.C. 5715.33, and not the year of a new six-year reappraisal (Appellant's Merit Brief, p. 9). As indicated above, however, no such distinction is set forth in R.C. 5715.19(D) and there is no basis for rewriting the statute to make such a distinction. Whether such a distinction should be incorporated into R.C. 5715.19(D) is a matter for the General Assembly to address.

Appellant also cites the decision of the Tenth Appellate District in the case of *Concord Columbus, L.P. v. Joseph W. Testa, Auditor, Franklin County, et al.* (1997), 122 Ohio App. 3d 205; 701 N.E.2d 449; 1997 Ohio App. Lexis 3540, but this case is of no help to Appellant. As Appellant admits in its brief (Merit Brief, p. 9), this case did not deal with a carryover value, but rather with the continuing complaint provisions and the prohibition in R.C. 5715.19(A)(2) of filing two complaints in the same three-year appraisal cycle. The Court's holding was as follows:

“While a prior complaint is still pending before the BOR, the parties are not required to keep filing additional complaints in order for the BOR to retain jurisdiction for the ensuing years within the same triennium period.” (p. 210)

Appellant claims that the decision in *Concord Columbus, L.P.*, supra, had something to do with a carryover value not applying to “tax year 1996” (Merit Brief, p. 9), but the decision makes no reference to tax year 1996, but only to tax year 1995, and no party sought to apply any value to tax year 1996. Nothing in *Concord Columbus, L.P.*, supra, is relevant to the issue involved in the present appeal.

Appellant also cites this Court's reference to “problems” created by the carryover value apparently for the point that the provision is ambiguous or unclear. The “problem” was first noted in *Oberlin Manor, Ltd. v. Lorain County Board of Revision et al.* (1994), 69 Ohio St. 3d 1;

1994-Ohio-500; 629 N.E.2d 1361, where the Lorain County Auditor refused to carryover a value determined by the BTA for tax year 1982 to tax years 1983 and 1984, which were the remaining two years of the same three-year appraisal cycle. This Court was critical of the BTA because it refused to make explicit that the carryover value provisions of R.C. 5715.19(D) make a value for the first year of a three-year appraisal cycle applicable to the remaining two years of the appraisal cycle (see 69 Ohio St. 3d, at p. 3).

In the *Royal Financing* decision, *supra* at P24, this Court made reference to the “problems under R.C. 5715.19(D)” when it stated as follows:

“[P]roblems 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 the auditor confused over the exact years to which the decision applies.”

However, in both *Oberlin Manor* and in *Royal Financing*, *supra*, the county auditor failed to apply a carryover value to a tax year that was obviously and clearly a “succeeding” year and an “ensuing” year under R.C. 5715.19(D). In each case, the question was resolved by a straight-forward application of the plain meaning of R.C. 5715.19(D). In the present appeal, as indicated above, Appellant does not question whether tax year 2005 was a “succeeding” year and an “ensuing” year under R.C. 5715.19(D) with respect to a BTA decision rendered in September, 2006, but rather Appellant demands that this Court rewrite R.C. 5715.19(D) to exclude a carryover value from applying in all cases to the year of a six-year reappraisal. Thus, whatever the “problems” may have been in *Oberlin Manor* and in *Royal Financing*, *supra*, as to what years a carryover applies to, that problem is not involved in the present appeal. The BTA could have stated in its decision rendered in September, 2006, that the carryover value applied to tax year

2005, which was a “succeeding” year and an “ensuing” year under R.C. 5715.19(D). However, this would have accomplished nothing because Appellant still would have filed an appeal to this Court, raising the very same arguments that the carryover value should not apply to the first year of a six-year reappraisal.

Appellant makes a number of other claims in an effort to show that a carryover value is bad legislative policy, but no such claims are valid and none would justify a rewriting of the statute to provide what Appellant wants.

**Proposition of Law No. 3:**

A Complainant Before A County Board Of Revision And An Appellant Before The BTA Has The Burden To Prove The True Value Of The Property.

Appellant had the burden to prove the true value of its property before both the Board of Revision and the BTA. Because Appellant failed on two occasions to present any evidence as to the true value of its property to the Board of Revision and the BTA, Appellant cannot claim that the value \$20,100,000 was incorrect in any respect. Appellant failed to carry its burden of proof.

In *Kalmbach Wagner Swine Research Farm v. Board of Revision*, 81 Ohio St. 3d 319, 322-323; 1998 Ohio 475; the Court stated that “the complainant seeking a decrease in value bears the burden of proof before the board of revision.” Most recently, in *Fogg-Akron Assoc., L.P. v. Summit Cty. Bd. of Revision*, 124 Ohio St.3d 112, 2009-Ohio-6412, this Court stated the following as to the appellant’s burden of proof before the BTA:

“[¶ 16] \*\*\* [T]he dispositive principle is that \*\*\* the appellant before the BTA, bore the burden of proving its proposed value. \*\*\* Fogg had an affirmative burden to prove a value as of January 1, 2005. Fogg failed to present probative evidence showing that the value of its property

should have been set at \$2.5 million, or at any amount other than the value determined by the county.”

In *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio-5932, this Court stated the following:

“[¶ 27] Moreover, when ‘cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase or decrease from the value determined by the board of revision.’ *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, 566, 740 N.E.2d 276. That burden requires the appellant to ‘present competent and probative evidence to make its case; it is not entitled to a reduction or an increase in valuation merely because no evidence is presented against its claim.’ *Id.*, citing *Hibschman v. Bd. of Tax Appeals* (1943), 142 Ohio St. 47, 26 O.O. 239, 49 N.E.2d 949.”

These burden of proof rules applied to Appellant when Appellant contested the carryover value of its property for tax year 2005 under its continuing complaint and applied to Appellant for tax year 2006 when it was given a hearing under the new complaint Appellant filed for tax year 2006.

In its Proposition of Law No. 2, Appellant attempts to shift the burden of proving the true value of its property for tax year 2006, or to relieve itself of that burden, by claiming that the County Auditor’s initial value for tax year 2005 (\$17,900,000) should have applied to its property for tax year 2006 (Appellant’s Merit Brief, p. 14). That claim is based on Appellant’s failure to recognize that when Appellant filed a new board of revision complaint for tax year 2006, Appellant had the burden to prove the true value of its property for tax year 2006, just as any other property owner who filed a complaint for tax year 2006.

In *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, 915 N.E.2d 1196, ¶ 31, this Court once again emphasized that the property owner has the burden to prove the true value of the property; that the County Auditor does not have to defend his or her initial value; and that the Auditor's value is the "default valuation." These principles are set forth in paragraph 31 of the Court's decision, which provides in part that: "\*\*\*\* the county's appraised value thus forms in most cases a default valuation that must be preferred and adopted if the appellant at the BTA fails to prove a different value of the property \*\*\*."

Furthermore, the value of \$17,900,000, which Appellant wants to apply to tax year 2006, never was the true value of Appellant's property for tax year 2006. The tax list and duplicate for tax year 2006, and the tax bills for that year, set forth a true value of \$20,100,000 for Appellant's property. Appellant acknowledged that the value of \$20,100,000 appeared on its first tax bill for tax 2006, and that Appellant disagreed with this value and that is why Appellant filed its complaint with the BOR (Appellant's Merit Brief, p. 14). The Auditor's value of \$20,100,000 was the original value and default value of Appellant's property for ax year 2006. If Appellant claimed that the true value of its property for tax year 2006 was \$17,900,000, then Appellant had the burden to prove that value. In the absence of any appraisal evidence, the BOR and the BTA were required to affirm the true value of \$20,100,000 for Appellant's property for tax year 2006.

**Proposition of Law No.4:**

The Carryover Value Provisions Of R.C. 5715.19(D) Are Not Unconstitutional.

Appellant claims that the carryover value requirement of R.C. 5715.19(D) is a penalty that violates Appellant's due process rights because Appellant is "denied the protection of a mandatory reappraisal." Appellant cites no authority in support of the claim that it had right to a "mandatory reappraisal" of its property or that this right was not adequately protected by the

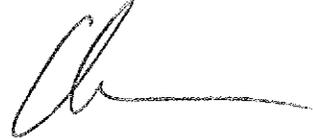
statutory “continuing complaint” that Appellant could prosecute, and did prosecute, in order to contest the value of its property for tax year 2005.

Appellant also claims that a carryover value violates the uniform rule provisions of Article XII, Section 2, of the Ohio Constitution. However, the carryover value provision is a uniform rule that applies to all taxpayers and property owners who file board of revision complaints and take appeals from the decisions of boards of revision.

**CONCLUSION**

For the reasons set forth herein, this Court is respectfully requested to affirm the decision of the Ohio Board of Tax Appeals.

Respectfully submitted,



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School District

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing brief of Appellee was served upon J. Kieran Jennings, Siegel Siegal Johnson & Jennings, 25700 Science Park Drive, Suite 210, Cleveland, Ohio, 44122, and Paul Stickel, Assistant County Prosecutor, 373 South High Street, 20th Floor, Columbus, Ohio 43215, and Richard Cordray, Ohio Attorney General, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, by regular U.S. mail, postage prepaid, this 15th day of March, 2010.



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Mark H. Gillis

## **5717.03 Decision of board of tax appeals - certification - effect.**

(A) A decision of the board of tax appeals on an appeal filed with it pursuant to section 5717.01, 5717.011, or 5717.02 of the Revised Code shall be entered of record on the journal together with the date when the order is filed with the secretary for journalization.

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

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

(C) In the case of an appeal from a review, redetermination, or correction of a tax assessment, valuation, determination, finding, computation, or order of the tax commissioner, the order of the board of tax appeals and the date of the entry thereof upon its journal shall be sent by the board to all persons who were parties to the appeal before the board, the person in whose name the property is listed or sought to be listed, if the decision determines the valuation or liability of property for taxation and if such person is not a party to the appeal, the taxpayer or other person to whom notice of the tax assessment, valuation, determination, finding, computation, or order, or correction or redetermination thereof, by the tax commissioner was by law required to be given, the director of budget and management, if the revenues affected by such decision would accrue primarily to the state treasury, and the county auditors of the counties to the undivided general tax funds of which the revenues affected by such decision would primarily accrue.

(D) In the case of an appeal from a municipal board of appeal created under section 718.11 of the Revised Code, the order of the board of tax appeals and the date of the entry thereof upon the board's journal shall be sent by the board to all persons who were parties to the appeal before the board.

(E) In the case of all other appeals or applications filed with and determined by the board, the board's order and the date when the order was filed by the secretary for journalization shall be sent by the board to the person who is a party to such appeal or application, to such persons as the law requires, and to such other persons as the board deems proper.

(F) The orders of the board may affirm, reverse, vacate, modify, or remand the tax assessments, valuations, determinations, findings, computations, or orders complained of in the appeals determined by the board, and the board's decision shall become final and conclusive for the current year unless reversed, vacated, or modified as provided in section 5717.04 of the Revised Code. When an order of

the board becomes final the tax commissioner and all officers to whom such decision has been sent shall make the changes in their tax lists or other records which the decision requires.

(G) If the board finds that issues not raised on the appeal are important to a determination of a controversy, the board may remand the cause for an administrative determination and the issuance of a new tax assessment, valuation, determination, finding, computation, or order, unless the parties stipulate to the determination of such other issues without remand. An order remanding the cause is a final order. If the order relates to any issue other than a municipal income tax matter appealed under sections 718.11 and 5717.011 of the Revised Code, the order may be appealed to the court of appeals in Franklin county. If the order relates to a municipal income tax matter appealed under sections 718.11 and 5717.011 of the Revised Code, the order may be appealed to the court of appeals for the county in which the municipal corporation in which the dispute arose is primarily situated.

(H) At the request of any person that filed an appeal subject to this section, the decision or order of the board of tax appeals issued pursuant to division (B), (C), (D), or (E) of this section shall be sent by certified mail at the requestor's expense.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 09-26-2003