

IN THE SUPREME COURT OF OHIO

ORIGINAL

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

REPLY BRIEF OF APPELLANT AERC SAWMILL VILLAGE, INC.

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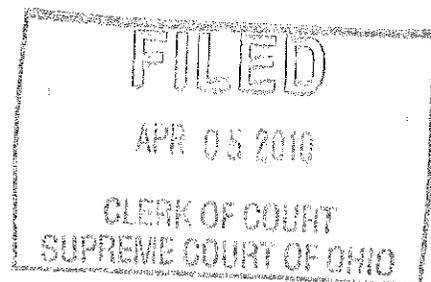


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INTRODUCTION

In its merit brief, Appellee Board of Education of the Dublin City Schools (“Appellee”) sets forth a number of arguments stating why the carryover value provisions of R.C. 5715.19(D) were properly interpreted by the Ohio Board of Tax Appeals (“BTA”). A review of these arguments shows that they are without merit, and, with regard to Appellee’s proposition of law no. 3, in fact raise new issues not before the Court in this matter.

Initially, in response to Appellee’s statement of the case and facts, this appeal is not simply a matter of determining a value for a parcel of real property. It involves the required duty of a County Auditor, pursuant to R.C. 5713.01, to reappraise property in its county every six years, and the effect of the time period of an appeal at the BTA on this statutory duty of a County Auditor. Appellee’s contention that “Appellant refused to present any evidence ***” and Appellee’s discussion relating to burdens of proof is misplaced and raises new issues not before this Court in this appeal.¹ Furthermore, Appellee’s argument that R.C. 5715.19(D) and R.C. 5713.01 are not in conflict is patently unfounded, as a basic reading of the two statutes reveals that the carryover language in R.C. 5715.19(D) directly conflicts with the statutory duty of a County Auditor to reappraise property in its county every six years when an order is issued by the BTA with the language “carried forward according to law” included in the order.

LAW AND ARGUMENT

Appellant’s Reply to Appellee’s Proposition of Law No. 1

Appellee’s argument that the carryover value provisions of R.C. 5715.19(D) are plain and unambiguous is unsupported.

Appellee argues in its merit brief that, in reference to R.C. 5715.19(D), “this appeal should be resolved by a straight-forward application of the plain language of the carryover

¹ Appellee’s Merit Brief, pp. 2, 13 - 15.

provisions ***.”² Appellant’s merit brief, in its Proposition of Law 1, addresses the fact that such language is anything but plain and unambiguous.³ In fact, the BTA uses the undeniably vague phrase “[i]t is further ordered that the stipulated values be carried forward according to law” in reference to R.C. 5715.19(D). The issues presented to the Court in this appeal constitute a matter of first impression. In addition to the fact that this Court has never addressed the impact of a multi-year retroactive settlement on the mandatory duty of a County Auditor to reappraise property every six years, if the language of R.C. 5715.19(D) was as plain and unambiguous as Appellee repeatedly asserts, Appellant would not have instituted this appeal.

Appellee’s merit brief cites certain cases that relate to the application of unambiguous statutes. However, Appellee has not given the full picture of the existing authority on this issue, nor has Appellee addressed the issue of the ambiguity when both R.C. 5715.19(D) and R.C. 5713.01 are read together. In addition to the ambiguity created when both statutes are read together, there is a clear conflict between the two statutes, which will be addressed in Appellant’s Reply to Appellee’s Proposition of Law No. 2 below.

In *Family Medicine Foundation Inc. v. Bright* (2002), 96 Ohio St.3d 183, this Court stated as follows:

“When weighing the parties’ opposing interpretations of R.C. 1329.10(C), we are compelled to adhere to the plain language of that provision unless an ambiguity exists. *State v. Jordan* (2000), 89 Ohio St.3d 488, 492, 733 N.E.2d 601. It is firmly established that a statute is ambiguous when its language is subject to more than one reasonable interpretation. *Id.* Because we believe that R.C. 1329.10(C) reasonably can be interpreted in more than one way, we find it to be ambiguous.” *Id.* at ¶8.

² Appellee’s Merit Brief, pp. 3.

³ Appellant’s Merit Brief, pp. 4 – 14.

This Court has long acknowledged “the principle that ambiguous tax provisions must be resolved in favor of the taxpayer, except when that ambiguity involves an exemption.” See *B.F. Goodrich Co. v. Peck* (1954), 161 Ohio St. 202, 53 O.O. 91, 118 N.E.2d 525; *Lake Front Lines, Inc. v. Tracy* (1996), 75 Ohio St.3d 627, 665 N.E.2d 662. ***. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 305, 720 N.E.2d 517, concurring opinion at 310. When read together, R.C. 5715.19(D) and R.C. 5713.01 are ambiguous and lead to more than one reasonable interpretation, because it is unclear as to whether a statutorily mandated reappraisal or “carry-forward” value applies when a BTA settlement carries through a reappraisal period. As such, the ambiguity present requires that this Court interpret the provisions in Appellant’s favor.

In *Columbia Gas Transmission Corporation v. Levin*, 117 Ohio St.3d 122, 2008-Ohio-511, this court stated:

“*** [W]e have rejected the strict construction doctrine when its application would result in unreasonable or absurd consequences. See *CC Leasing Corp. v. Limbach* (1986), 23 Ohio St.3d 204, 207, 23 OBR 364, 492 N.E.2d 421. Indeed, it is the function of courts to construe statutory language to effect a just and reasonable result. *Gulf Oil Corp.*, 44 Ohio St.2d 208, 73 O.O.2d 507, 339 N.E.2d 820, paragraph two of the syllabus. ***.

When read individually, the statutes show that unreasonable results can follow. As discussed in Appellant’s merit brief, if the required reappraisal period for the subject property is ignored, the property will not have been reappraised by the County Auditor for a decade.⁴ By ignoring the County Auditor’s duties under R.C. 5713.01, Appellee reasons that as long as a complaint is outstanding and no order has been issued by the BTA, no reappraisal value is valid, and therefore there is *no time limit* as to when property must be reappraised, which is a clearly unreasonable consequence of not allowing the mandatory reappraisal to have its intended effect.

⁴ Appellant’s Merit Brief, p. 13.

Appellant's Reply to Appellee's Proposition of Law No. 2

Appellee's contention that there is no conflict between R.C. 5715.19(D) and R.C. 5713.01 is without merit and is in contravention to Ohio Supreme Court precedent.

Appellee's assertion that no conflict exists between R.C. 5715.19(D) and R.C. 5713.01 is groundless and does not comport with Ohio law. Furthermore, Appellee attempts to characterize Appellant's arguments as an effort to show that the "carry-forward" provision is "bad" legislative policy, but such attempts are clearly meant to distract the reader from the relevant issues.

A reading of both statutes shows that the "carry-forward" provisions in R.C. 5715.19(D) must be read *in pari materia* with the reappraisal requirement in R.C. 5713.01. It is a well-established proposition of law that statutes relating to the same subject matter, while passed at different times and making no reference to each other, are *in pari materia* and should be construed together. If statutes pertain to similar subject matter, they should be read together when both are applicable to a specific matter. This Court has followed this proposition of law on several occasions. In *State ex rel. Cordray v. Midway Motor Sales, Inc.*, 122 Ohio St.3d 234, 2009-Ohio-2610, this Court stated:

****. Because we are faced with two related statutory provisions, R.C. 4549.46(A) and 4505.06 must be read *in pari materia*. *Maxfield v. Brooks* (1924), 110 Ohio St. 566, 144 N.E. 725, paragraph two of the syllabus. In reading statutes *in pari materia* and construing them together, this court must give a reasonable construction that provides the proper effect to each statute. *Id.* All provisions of the Revised Code bearing upon the same subject matter should be construed harmoniously unless they are irreconcilable. *Couts v. Rose* (1950), 152 Ohio St. 458, 461, 40 O.O.482, 90 N.E.2d 139." *Id.* at ¶25.

See *Carnes v. Kemp* (2004), 104 Ohio St.3d 629, 821 N.E.2d 180; *Cater v. Cleveland* (1998), 83 Ohio St.3d 24, 697 N.E.2d 610; *Johnson's Markets, Inc. v. New Carlisle Dept. of Health* (1991), 58 Ohio St.3d 28, 567 N.E.2d 1018.

In the instant matter, R.C. 5715.19(D) and R.C. 5713.01 relate to the same subject matter. Both relate to the valuation of real property for tax purposes, and specifically pertain to the time periods for when such property should be valued. Based on the issues presented in this appeal, while the statutes relate to the same subject matter, they must be given “a reasonable construction that provides the proper effect to each statute.” *State ex rel. Cordray*, supra, at ¶25. The statutes are not irreconcilable and can be given a reasonable construction and interpretation by this Court. The arguments presented by Appellant are not unreasonable and allow for multiple-year settlements to apply up to five years prior to an order issued by the BTA, which is not a short period of time. A “carry-forward” will still take place, but the unreasonable and illogical assumption that a “carry-forward” can apply in perpetuity will be eliminated. A mandated six year reappraisal will have its intended effect and property will reappraised on a consistent basis as it should. This harmonious construction of these two statutes will clarify the law on this issue, which has not yet been addressed by this Court until this appeal.

In summary, to resolve the conflict between R.C. 5715.19(D) and R.C. 5713.01, this Court must find that the mandatory statutory requirement of a six-year reappraisal must be followed. Although 5713.01 must be followed in all circumstances, this does not prevent the “carry-forward” of a value in an interim period or triennial within the six year reappraisal cycle. Thus this Court should find that the “carry-forward” of value is permissible within the six year period, but beyond that period of time, the “carry-forward” would violate the General Assembly’s mandate under R.C. 5713.01 to reappraise property every six years. By failing to

require such mandatory reappraisal, this Court would be permitting a County to violate the uniformity provisions of the Ohio Constitution, which is discussed in Appellant's Reply to Appellee's Proposition of Law No. 4 below. By failing to require the Auditor to reappraise property every six years, this Court would be violating the rights of taxpayers that have the right under Ohio law to have their properties reappraised, which takes into account current market factors to set the value of the property, and not market factors from previous years.

With regard to Appellee's versions of the cases cited by Appellant in its brief, Appellant stands by its discussion and interpretation of such cases in its merit brief.

Appellant's Reply to Appellee's Proposition of Law No. 3

Appellee's argument related to the burden of proof raises new issues before this Court that were not asserted in Appellant's Notice of Appeal.

In pages thirteen through fifteen of its brief, Appellee raised new issues not brought before this Court in Appellant's Notice of Appeal. Appellee has not filed a cross-appeal, and therefore is precluded from discussing such issues. It is clear from Appellant's Notice of Appeal and the assignments of error included therein that this matter is jurisdictional and procedural in nature, and does not relate to the probative value of any evidence introduced. Appellant has consistently argued that the statutory reappraisal requirement in R.C. 5713.01 must be applied in this case as a matter of law. It is manifestly clear from recent decisions of this Court that it will not consider such new issues for which it lacks jurisdiction. *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2010-Ohio-687, at ¶29; *Polaris Amphitheater Concerts, Inc. v. Delaware Cty. Bd. of Revision*, 118 Ohio St.3d 330, 2008-Ohio-2454, at ¶12-15; *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948. As such, the Court should not consider the arguments advanced by Appellee in its Proposition of Law No. 3.

Appellant's Reply to Appellee's Proposition of Law No. 4

The carryover value provisions of R.C. 5715.19(D) are unconstitutional, and Appellee's declaration to the contrary is unfounded.

Appellant's right to due process of law is violated when it is denied the protection of a mandatory reappraisal. By failing to comply with its statutory duty of assessing real property for taxation in a lawful manner, the Auditor has committed a taking of property without due process of law. *Mott Bldg., Inc. v. Perk (1970)*, 24 O.Misc. 110, 53 O.O.2d 138, 263 N.E.2d 688. Here, the Auditor has in effect denied Appellant the right to the mandatory reappraisal of its property pursuant to R.C. 5713.01 by foregoing the protections provided to all property owners in the State of Ohio. As a result of this conduct, Appellant's constitutional rights have been violated.

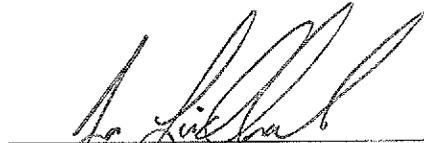
Furthermore, Appellee incorrectly asserts that the carryover value provisions apply equally to all taxpayers and property owners. This is not in fact the case, because as asserted in Appellant's merit brief, the carryover provisions could result in some properties being appraised every six years, consistent with the law, but also could result in some properties only being appraised every twelve years, or even every eighteen years, depending on the time it takes to resolve a tax complaint. The purpose of the mandatory reappraisal, and the triennial update, is to insure that property values are evaluated on a regular and systematic basis to comply with the maxim stated in the Ohio Constitution that "[I]and and improvements thereon shall be taxed by uniform rule according to value ***." Ohio Constitution Article XII, §2. The axiom of ad valorem taxation is premised upon the concept of uniformity, and thus the conflict between the "carry-forward" provisions and the mandatory reappraisal must be resolved by upholding the Ohio Constitution and finding that Ohio law requires taxing authorities to reappraise property every six years in a uniform manner. Therefore, as Appellant is subject to non-uniform carryover provisions which could cause Appellant's property to not be revalued according to

R.C. 5713.01, Appellant's constitutional rights have been violated.

CONCLUSION

In conclusion, Appellant urges this Court to find that the conflicting sections of Ohio Revised Code R.C. 5715.19(D) and R.C. 5713.01 be resolved by finding that the mandatory reappraisal pursuant to 5713.01 must take place every six years as mandated by Ohio law, and that values should only "carry-forward" within the interim period. 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,

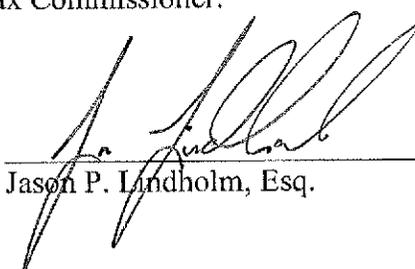


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CERTIFICATE OF SERVICE

This is to certify that on this 5th day of April 2010, a copy of the Reply 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.



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