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EXPLANATION OF WHY THIS CASE IS A CASE OF  
PUBLIC OR GREAT GENERAL INTEREST

This case presents two issues: (1) whether an administrative tribunal, namely a county board of revision, is deprived of jurisdiction to consider a valid property tax complaint when the board of revision fails to provide notice of the complaint within the time period required by R.C. 5715.19(B); and (2) whether the doctrine of the law of the case applies to proceedings that originated in a county board of revision.

In the case at hand, the Board of Education of the Cleveland Municipal Court filed a complaint with the Cuyahoga County Board of Revision requesting an increase in the value of property owned by 2200 Carnegie, LLC. The complaint was valid when filed, and invoked the jurisdiction of the board of revision.

In a two to one decision, the Eighth District Court of Appeals ordered the complaint dismissed. It held that when a valid complaint has been filed with the board of revision and the board's jurisdiction is invoked, if the board of revision fails to provide notice to other parties as required by R.C. 5715.19(B), the complaint must be dismissed. In addition, despite this being the second appeal on the same issue (the first terminating with the common pleas court), the Court of Appeals held that the doctrine of the law of the case had no application. Both of these holdings are contrary to law. The Court's holding will lead to the dismissal of valid complaints, quite possibly in mass, and is of public and great general interest to all persons or entities

that wish to file a complaint with the board of revision to either increase or decrease the value of real property.

It has been undisputed that the board of education had the right to file a complaint with the board of revision, and undisputed that the complaint was in full compliance with section 5715.19 of the Ohio Revised Code. It has also been undisputed that the board of revision failed to provide notice of the board of education's complaint to the property owner, 2200 Carnegie LLC, within thirty days of the last day for filing such complaints, as required by section 5715.19(B). The board of revision issued a decision without the required notice, and 2200 Carnegie, LLC appealed to the court of common pleas. The court of common pleas remanded to the board of revision with instructions to issue notice and thereby obtain jurisdiction. No appeal was taken from this decision, and this is not the case that was before the Eighth District Court of Appeals.

Despite the fact that the board of education's complaint was both authorized and had invoked the jurisdiction of the board of revision, and despite the un-appealed common pleas order remanding with instructions to the board of revision to issue notice and obtain jurisdiction, the Eighth District Court of Appeals found that since the board of revision itself failed to send the required notice, the board no longer had jurisdiction to consider the complaint. In other words, the Court of Appeals held that by its own actions the board of revision had divested itself of jurisdiction over the board of education's complaint.

The decision of the Court of Appeals has created an injustice in this particular case. More importantly, and of public and great general interest, the Court's decision threatens to create havoc with respect to all complaints requesting a change in assessed value greater than \$17,500 that are filed with the Cuyahoga County Board of Revision, regardless of who filed the complaint. R.C. 5715.19(B) requires notice of complaints to be sent to various parties, including the property owner (as in the present matter) and to the board of education. Under the holding by the Court of Appeals, if the board of revision sends out its notices of complaints to the county property owners or boards of education with territory in the county only one day late, all of these complaints would have to be thrown out. This would be the case regardless if all of the complaints complied with R.C. 5715.19, and regardless if all had invoked the jurisdiction of the board of revision.

Indeed, the rationale set forth by the Court of Appeals has application beyond complaints filed with the board of revision. Under the Court's holding, where the General Assembly has instructed an administrative tribunal to take some action with respect to a valid petition or complaint, if the tribunal fails to take this action, the petition or complaint must be dismissed. This drastic result would hold true regardless if the tribunal intentionally delayed taking the required action, and regardless if the General Assembly specifically required the tribunal to hear all validly filed petitions or complaints.

Separate from the issue of whether the Court of Appeals was correct in holding that a valid complaint must be dismissed because of inaction by the tribunal with

which the complaint was filed, this case also presents the issue of whether a party is required to appeal an adverse decision at the earliest time. The issue is whether a party can receive an adverse decision from the common pleas court, let the case be remanded to the board of revision for further proceedings, and then when the board of revision issues an adverse ruling appeal the issue that was determined in the first case. In other words, the question is whether the doctrine of the law of the case apply to proceedings that originated in the county board of revision. The Eighth District implicitly held that the doctrine had no application as “the remand to order the BOR to serve the property owner does not cure the jurisdictional defect.” This is a direct review of the decision by the court of common pleas in an earlier case, a case that was not appealed and was not before the Eighth District. This holding by the Eighth District was improper and contrary to law.

#### STATEMENT OF CASE AND FACTS

The facts in this matter are largely undisputed, and primarily consist of the proceedings before the Cuyahoga County Board of Revision, the Cuyahoga County Court of Common Pleas, and the Eighth District Court of Appeals.

On March 27, 2007 the Board of Education of the Cleveland Municipal School District filed a complaint with the Cuyahoga County Board of Revision requesting an increase in the value of permanent parcel numbers 103-16-029 and 103-16-030 for tax year 2006. On its complaint the board of education identified 2200 Carnegie, LLC, as the owner of the property, and stated that the basis for its complaint was a sale that had occurred on October 16, 2006.

The complaint came before the board of revision for hearing and the increase request was granted. 2200 Carnegie, LLC, appealed the decision to the Cuyahoga County Court of Common Pleas, being the matter captioned *2200 Carnegie, LLC v. Cuyahoga County Board of Revision*, Cuyahoga Cty. Common Pleas Case No. CV-07-641119 (“*2200 Carnegie I*”). In this first appeal, 2200 Carnegie argued that it had never received notice of the board of education’s complaint. The common pleas court agreed, issuing an order on September 8, 2008 stating that “[t]he Court remands this matter to the Cuyahoga County Board of Revision with instructions to send notice of the board of education complaint to the property owner pursuant to R.C. 5715.19(B). The parties shall then proceed accordingly after notice is properly given and jurisdiction is obtained.” No appeal was taken from this decision by any party.

On remand, the board of revision sent notice of the board of education’s complaint to 2200 Carnegie, LLC, the board of education’s complaint was again heard by the board of revision, and a decision was issued again granting the board of education’s requested value. 2200 Carnegie, LLC again appealed to the common pleas court, being the matter *2200 Carnegie, LLC v. Cuyahoga County Board of Revision*, Cuyahoga Cty. Common Pleas Case No. CV-09-702890 (*2200 Carnegie II*”).

The common pleas court subsequently affirmed the decision by the board of revision. 2200 Carnegie, LLC then appealed to the Eighth District Court of Appeals. 2200 Carnegie again argued, as it had done in *2200 Carnegie I*, that the complaint must be dismissed for failure of the board of revision to provide it with timely notice

of the board of education's complaint. In reply, the board of education argued that a failure of a board of revision to provide notice of a complaint to other parties within thirty days is not a jurisdictional defect requiring dismissal. Notice was required, and once given the board of revision had authority to proceed. In addition, the board of education argued that 2200 Carnegie's argument was barred by the law of the case. The board argued that if 2200 Carnegie disagreed with the decision in *2200 Carnegie I*, it was required to appeal. Having failed to do so, it was bound by this first decision.

On October 20, 2011, in a split decision the Eighth District Court of Appeals reversed the decision by the court of common pleas. While acknowledging that the board of education's complaint was in full compliance with R.C. 5715.19, the court held that R.C. 5715.19(B) required the board of revision to provide notice of the complaint to 2200 Carnegie within thirty days from the last date the complaint could be filed. Having failed to do so, the Court held that the board of revision no longer had jurisdiction to consider the board of education's complaint. Restated, the Eighth District Court of Appeals held that by its own actions, the board of revision divested itself of jurisdiction. The dissent argued that while the notice provisions of R.C. 5715.19(B) are mandatory, a failure to comply could be and was remedied by sending notice.

On October 31, 2011 the board of education moved the court of appeals to reconsider its decision. This motion was denied on November 10, 2011.

The board of education submits that the decision by the Court of Appeals was contrary to law and should be reversed. Absent reversal, the Court's decision will

potentially cause havoc with respect to all complaints filed with the Cuyahoga County Board of Revision and cause harm to all parties authorized to file complaints with the board of revision. Under the Court's decision, there is the real possibility that some if not all of the complaints filed with the Cuyahoga County Board of Revision that request either an increase or decrease in assessed value that is greater than seventeen thousand five hundred dollars will have to be dismissed. This was not the intent behind R.C. 5715.19(B), and the Eighth District's decision to the contrary should be reversed.

### ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

#### Proposition of Law No. 1:

A failure by a board of revision to provide notice of the filing of a valid complaint as required by R.C. 5715.19(B) does not mandate the dismissal of the complaint, but instead requires the board of revision to provide notice prior to conducting a hearing and issuing a decision.

Section 5715.19(A) of the Ohio Revised Code authorizes the filing of complaints with a county board of revision by a number of interested parties. In particular (and most commonly), the General Assembly has authorized property owners and boards of education to file complaints. Such a complaint must be filed "on or before the thirty-first day of March of the ensuing tax year. . ." R.C. 5715.19(A)(1).

Once a complaint has been filed with the board of revision, R.C. 5715.19(B) states that "[w]ithin thirty days after the last date such complaints may be filed, the auditor shall give notice of each complaint in which the stated amount of

overvaluation, undervaluation, illegal valuation or incorrect determination is at least seventeen thousand five hundred dollars to each property owner whose property is the subject of the complaint . . . and to each board of education whose school district may be affected by the complaint.” Upon receiving notice from the board of revision that a complaint has been filed under R.C. 5715.19(A), the property owner or board of education has thirty days to file its own complaint and be made a party to the action. R.C. 5715.19(B) .

The Eighth District Court of Appeals has now held that the thirty day notice provision of R.C. 5715.19(B) is mandatory, and a failure by a board of revision to provide notice forever deprives the board of authority to hear the complaint. Notably, this holding applies regardless if the complaint was filed by the board of education, as in the present case, or the property owner. For either, the board of revision is required to send notice. The Court of Appeals has held that although a property owner or board of education has filed a complaint that complies with R.C. 5715.19(A) and therefore invokes the jurisdiction of the board of revision, if the board of revision does not give notice of the complaint to the property owner or board of education, intentionally or otherwise, the complaint must be dismissed. In other words, by failing to give timely notice, the board of revision has divested itself of jurisdiction. Stated another way, the Court has held that a board of revision may decide to decline jurisdiction to hear and decide a valid complaint. This is not a result that was contemplated by the General Assembly when enacting R.C. 5715.19(B).

As an initial matter, it must be kept in mind that a county board of revision is required by statute to hear and determine complaints. R.C. 5715.11. The board of revision does not have the authority to dismiss a complaint at will. In *Kalmbach Wagner Swine Research Farm v. Bd. of Revision of Wyandot Cty.*, 81 Ohio St.3d 319, 321, 1998-Ohio-475, 691 N.E.2d 270, the Ohio Supreme Court stated:

R.C. 5715.10 and 5715.11 set forth a board of revision's duties in valuing real property. According to R.C. 5715.10, a "board of revision shall be governed by the laws concerning the valuation of real property and shall make no change of any valuation except in accordance with such laws." Under R.C. 5715.11, a board of revision must hear real estate valuation complaints and "shall investigate all such complaints and may increase or decrease any such valuation or correct any assessment complained of, or it may order a reassessment by the original assessing officer."

The Supreme Court specified that the ability of a board of revision to dismiss a complaint and decline jurisdiction is limited, stating:

We first note that R.C. 5715.10 and 5715.11 do not specifically authorize boards of revision to dismiss complaints. These statutes authorize boards to hear valuation complaints and increase or decrease a property's valuation, correct an assessment, or order a reassessment. Thus, a board of revision, being a creature of statute, has these specified powers to act on complaints. *Swetland Co. v. Evatt* (1941), 139 Ohio St. 6, 21 O.O. 511, 37 N.E.2d 601, paragraph five of syllabus.

*Kalmbach Wagner Swine Research Farm*, 81 Ohio St.3d at 322, 1998-Ohio-475, 691 N.E.2d 270.

The Court reviewed its prior decisions as to when a board of revision is permitted to dismiss a complaint. Notably, in each case where the Court allowed the board of revision to dismiss a complaint, the dismissal was the result of a failure on

the part of the complainant, not the board of revision itself. These situations included:

- Where the complainant had not completed the form under R.C. 5715.13 and 5715.19. *Stanjim Co. v. Mahoning Cty. Bd. of Revision* (1974), 38 Ohio St.2d 233, 313 N.E.2d 14.
- Where the complainant had filed an impermissible second complaint in the same interim period. *Gammarino v. Hamilton Cty. Bd. of Revision* (1994), 71 Ohio St.3d 388, 643 N.E.2d 1143.
- Where the complainant had failed to prosecute. *LCL Income Properties v. Rhodes* (1995), 71 Ohio St.3d 652, 656 N.E.2d 1108.

*Kalmbach Wagner Swine Research Farm*, 81 Ohio St.3d at 322, 1998-Ohio-475, 691 N.E.2d 270.

All of these situations involved actions, or failure to act, on the part of the complainant, not the board of revision itself. As noted above, the board of revision is required to hear and decide complaints under R.C.5715.11; this requirement is not at the discretion of the board of revision.

The restriction on the ability of a board of revision to dismiss a complaint was further discussed in *Knickerbocker Properties, Inc. XLII v. Delaware Cty. Bd. of Revision*, 119 Ohio St.3d 233, 2008-Ohio-3192, 893 N.E.2d 457, a case cited by both the majority and dissent in the Eighth District's decision. While it is true that *Knickerbocker Properties* involved a failure to give notice of hearing as required by R.C. 5715.19(C) instead of the R.C. 5715.19(B) notice of the complaint as in the case at hand, it is also the case the Supreme Court held that the failure to give notice did

not divest the board of revision of jurisdiction to hear and consider the complaint. While the failure to give notice invalidated the board of revision's decision, it did not divest the board of jurisdiction over the complaint. Instead, the Supreme Court remanded the matter, and "[o]n remand, the BOR shall give proper notice and hold a new hearing concerning the value of the property." *Knickerbocker Properties, Inc. XLII* at ¶24. This language is remarkably similar to that of the common pleas court in *2200 Carnegie I*, a decision that was not appealed.

By holding that the notice provisions of R.C. 5715.19(B) are jurisdictional, the Eighth District Court of Appeals has held that a failure of notice supercedes the requirement that a board of revision hear and decide complaints under R.C. 5715.11. This holding is contrary to both statute and the holdings of the Ohio Supreme Court. While notice of the complaint was required, once notice was provided the board of revision had jurisdiction to hear and decide the board of education's valid complaint. For these reasons alone, the decision by the Eighth District Court of Appeals should be reversed.

Proposition of Law No. 2:

The doctrine of the law of the case applies to proceedings that originate with the board of revision, and a decision by a reviewing court is the law of that case for all subsequent proceedings.

In the case at hand, 2200 Carnegie, LLC, appealed the first decision by the Cuyahoga County Board of Revision to the Cuyahoga County Court of Common Pleas in *2200 Carnegie I*. 2200 Carnegie argued in this first appeal that the board of revision had no authority to hold a hearing and issue a decision where it had failed to

notify it of the board of education's complaint. The common pleas court agreed, and "remanded the matter to the BOR with instructions to send notice of the BOE's complaint to Carnegie and then proceed after jurisdiction was obtained." Decision, page 2 (emphasis added). This was a final order, and 2200 Carnegie, LLC could have appealed this decision to the Eighth District Court of Appeals if it so desired. It did not.

Instead, the matter was remanded to the board of revision, notice was sent, jurisdiction was obtained, a hearing was held, and a decision was rendered. After all of this, and after it received an adverse decision, 2200 Carnegie, LLC once again appealed, again arguing that the board of education's complaint must be dismissed for failure of the board of revision to issue notice. This second appeal of the same issue is barred by the doctrine of the law of the case.

The doctrine of the law of the case is succinctly summarized in 5 Ohio Jur.3d Appellate Review, §560 as follows:

The doctrine of the law of the case is a viable rule of practice in Ohio. Under the doctrine, the decision of a reviewing court in a case establishes the law of that case for all subsequent proceedings therein, not only in the trial court but also on subsequent proceedings in the same reviewing court. Under the doctrine, the decision of the reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels.

\* \* \*

The purpose of the "law of the case" doctrine is to assure that upon remand, the mandate of an appellate court is followed by the trial court. The doctrine is necessary to ensure consistency of results in a case, to avoid endless litigation by settling the issues, and to preserve the structure of courts . . . (footnotes omitted)

*Also see, Troyer v. Janis*, 10<sup>th</sup> Dist. No. 10AP-434, 2011-Ohio-2538, at ¶¶8, 14.

This doctrine barred 2200 Carnegie's argument to the Eighth District Court of Appeals. 2200 Carnegie previously appealed the board of revision's decision to the common pleas court, and the court reversed and remanded with instructions to the board of revision to send proper notice. The common pleas court further ruled that jurisdiction would be conferred upon the board of revision to proceed on the merits once notice was given. This decision by the trial court was not appealed, was the law of the case, and was final.

If 2200 Carnegie, LLC was not satisfied with the common pleas court's decision in *2200 Carnegie I*, it could have and should have appealed. It did not. The decision by the Eighth District simply encourages piece meal appeals, and unnecessarily prolongs litigation.

### CONCLUSION

The board of education agrees that R.C. 5715.19(B) requires notice to be given upon the filing of a complaint with the board of revision when the complaint requests a change in assessed value greater than seventeen thousand five hundred dollars. The board of education also agrees that notice was not provided in the time required by this same statute. However, this failure to give timely notice was not a jurisdictional defect requiring dismissal of the board of education's valid complaint. Instead, the failure to give notice meant that the board of revision did not have the authority to hear and decide the complaint until notice is given. In the case at hand, notice was given and jurisdiction was obtained. The decision by the Eighth District Court of Appeals that by its own actions (or inactions) the board of revision divested itself of

jurisdiction is contrary to law. Further, this decision is of public or great general interest to all parties filing complaints with the board of revision where the increase or decrease in assessed value is greater than seventeen thousand five hundred dollars. If the decision by the Eighth District Court of Appeals is permitted to stand, there is the real likelihood that the board of revision will be required to dismiss hundreds, if not thousands, of otherwise valid complaints. If the board of revision provides notice of complaints even one day late, regardless if the complaints are filed by the board of education or property owners, the decision by the Court of Appeals requires all to be dismissed.

For all of these reasons, the appellant, the Board of Education of the Cleveland Municipal School District, requests that the Supreme Court of Ohio accept jurisdiction so that the decision by the Eighth District Court of Appeals will be reviewed on the merits.

Respectfully submitted,



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# **APPENDIX**

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Memorandum in Support of Jurisdiction of Appellant Board of Education of the Cleveland Municipal School District" has been served upon the following this \_\_ day of December, 2011 by ordinary U.S. mail delivery:

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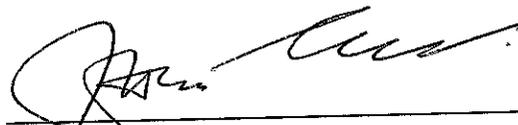
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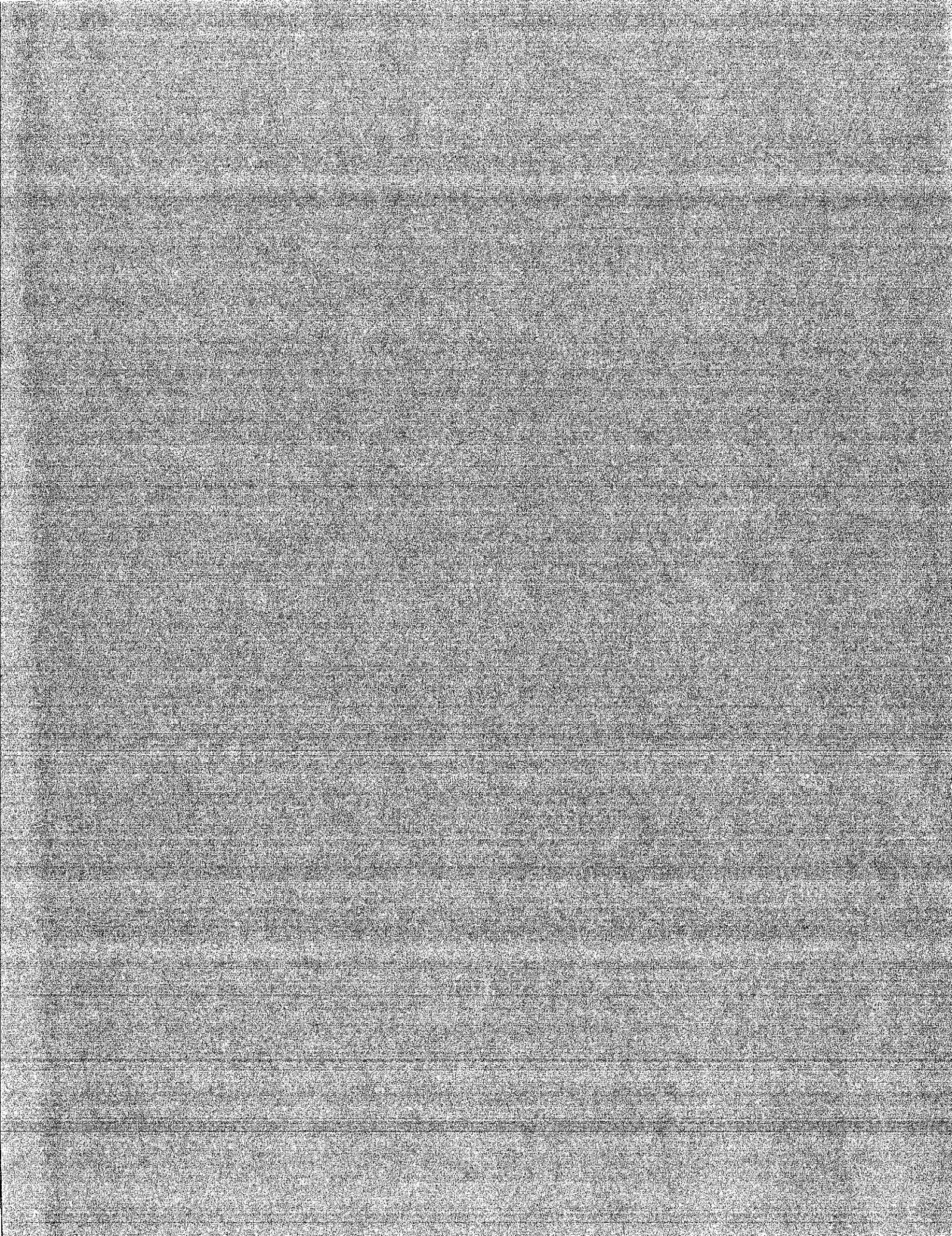
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Municipal School District



# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 96646

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**2200 CARNEGIE, LLC**

PLAINTIFF-APPELLANT

vs.

**CUYAHOGA COUNTY BOARD OF REVISION,  
ET AL.**

DEFENDANTS-APPELLEES

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**JUDGMENT:  
REVERSED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-702890

**BEFORE:** Blackmon, P.J., Stewart, J., and Boyle, J.

**RELEASED AND JOURNALIZED:** October 20, 2011

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**FILED AND JOURNALIZED  
PER APP.R. 22(C)**

**OCT 20 2011**  
BY GERALD E. FURST DEP.  
CLERK OF THE COURT OF APPEALS

**PATRICIA ANN BLACKMON, P.J.:**

Appellant, 2200 Carnegie, LLC, ("Carnegie") appeals the trial court's decision affirming the Cleveland Municipal School District Board of Education's ("BOE") valuation of the combined taxable values of Parcel Numbers 103-16-029 and 103-16-030. Carnegie assigns the following errors for our review:

**"I. The trial court abused its discretion by affirming the appellee Board of Education's valuation of the taxable value of the subject property owned by appellant as the appellee Board was without jurisdiction over appellant to hear and rule on the March 27, 2007 Complaint, as the notice of the filing of complaints '[w]ithin thirty days after the last such complaints may be filed' as mandated by ORC 5715.19(B) was not complied with."**

**"II. The trial court abused its discretion by affirming the appellee Board of Revision's valuation of the taxable value of the subject property owned by appellant as the appellee Board failed to certify to the trial court a complete transcript of the record of proceedings of said Board and, accordingly, failed to comply with ORC 5717.05."**

Having reviewed the record and pertinent law, we reverse the trial court's decision. The apposite facts follow.

In tax year 2006, the Cuyahoga County Auditor's office valued Carnegie's property, identified as Permanent Parcel Numbers 103-16-029 and 103-16-030, at \$422,200. On March 27, 2007, the BOE filed a complaint with the Board of Revision ("BOR") seeking a new value of \$520,000 based on an October 16, 2006 sale of the property.

On August 30, 2007, Carnegie filed a motion with the BOR to dismiss the complaint on the grounds that BOE had not acquired jurisdiction because of its failure to properly notify Carnegie. On that same date, the BOR held a hearing relative to the BOE's request and granted the increase. On October 11, 2007, the BOR notified Carnegie of the new valuation.

On November 8, 2007, Carnegie appealed the BOR's decision to the Cuyahoga County Common Pleas Court. Carnegie argued that it had not been duly notified, therefore, the BOR was without jurisdiction to proceed on the complaint. The trial court agreed. On September 8, 2008, the trial court remanded the matter to the BOR with instructions to send notice of the BOE's complaint to Carnegie and then proceed after jurisdiction was obtained.

On September 25, 2008, the BOR sent notice to Carnegie that the BOE had filed a complaint seeking a new valuation of the subject property. On April 16, 2009, the BOR held a hearing on the BOE's complaint and subsequently, on August 6, 2009, issued a decision granting the new valuation of the property.

On August 31, 2009, Carnegie appealed the BOR's second decision to the Cuyahoga County Common Pleas Court. On March 9, 2011, the trial court affirmed the BOR's decision granting the increased valuation. Carnegie now appeals.

**Lack of Notice**

In the first assigned error, which we find dispositive of the instant appeal, Carnegie argues the BOR was without jurisdiction to hear and rule on BOE's complaint because the Cuyahoga County Auditor failed to provide notice within the time period prescribed by the statute.

R.C. 5715.19(A), the statute that sets forth the manner in which the value of real property may be challenged, provides the following:

**“(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.”**

R.C. 5715.19(B) details the auditor's notification duties when a complaint is filed under subsection (A)(1):

**“Within thirty days after the last date such complaints [under subsection (A)(1)] may be filed, the auditor shall give notice of each complaint in which the stated amount of overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination is at least seventeen thousand five hundred dollars to each property owner whose property is the subject of the complaint, if the complaint was not filed by the owner or the owner's spouse, and to each board of education whose school district may be affected by the complaint.”**

Pursuant to this language, the auditor is statutorily obligated to notify the property owner and the board of education of the filing of a tax assessment

complaint under subsection (A)(1). *Roberts v. Clinton Cty. Aud.*, 12th Dist. Nos. CA2007-03-012, CA2007-03-013, CA2007-03-014, CA2007-03-015, CA2007-03-016, CA2007-03-017, CA2007-03-018, CA2007-03-019, 2008-Ohio-535.

In the instant case, it is undisputed that the BOE's first complaint, filed March 27, 2007, was filed within the statutory period as outlined above. It is also undisputed that the Cuyahoga County Auditor failed to notify Carnegie as outlined in the statute. Therefore, the BOR was without jurisdiction to consider the complaint.

Pursuant to R.C. 5715.19(A), a valuation challenge to tax year 2006 must be filed by March 31, 2007. Under R.C. 5715.19(A), the trial court's only recourse was to dismiss the matter. Consequently, the remand to order the BOR to serve the property owner does not cure the jurisdictional defect. See *Destro v. Cuyahoga Cty. Bd. of Revision* (2006), BTA No. 2006-V-669. See, also, *Bill v. Ottawa Cty. Bd. of Revision* (Nov. 5, 2004), BTA No. 2004-A-920; *Holderby v. Franklin Cty. Bd. of Revision* (May 14, 2004), BTA No. 2003-A-1011; *Wortman v. Licking Cty. Bd. of Revision* (Aug. 13, 1993), BTA No. 1992-M-1040; *Big Walnut, Inc. v. Franklin Cty. Bd. of Revision* (Oct. 30, 1984), BTA No. 1982-A-1082.

We are aware that in *Knickerbocker Properties, Inc. XLII v. Delaware Cty. Bd. of Revision*, 119 Ohio St.3d 233, 2008-Ohio-3192, 893 N.E.2d 457, the Ohio Supreme Court held that the BOE's failure to use the proper address of the property owner on the valuation complaint form did not deprive the BOR of jurisdiction. In the instant case, unlike *Knickerbocker* where notice was sent to the wrong address, there was no attempt at notifying the property owners that a valuation complaint was filed. In addition, in *Knickerbocker*, the notice was forwarded to the proper party in time for them to request and be granted a continuance of the evaluation hearing. As such, the instant case is factually distinguishable from *Knickerbocker*.

The appellee BOE makes a compelling argument that when it filed its complaint with the BOR, it had strictly complied with the mandate of R.C. 5715.19. Thus, the property owner did receive notice although not within the 30 day period. The BOE argues this is not a jurisdiction bar, but a notice requirement that may be cured, and it was. However, the language of R.C. 5715.19 mandates notice to the property owner.

Considering the record before us, the trial court erred in affirming the BOR's new tax valuation of the subject property. Accordingly, we sustain the first assigned error.

Our resolution of the first assigned error renders Carnegie's second assigned error moot. App.R. 12(A)(1)(C).

Judgment reversed.

It is ordered that appellant recover from appellees costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

  
PATRICIA ANN BLACKMON, PRESIDING JUDGE

MARY J. BOYLE, J., CONCURS;  
MELODY J. STEWART, J., DISSENTS  
(SEE ATTACHED DISSENTING OPINION.)

MELODY J. STEWART, J., DISSENTING:

I dissent from the decision reached by the majority in this case. I would overrule both assigned errors and affirm the trial court's decision to uphold the increased valuation.

When 2200 Carnegie sought dismissal of the March 27 complaint on the basis that it had not received notice, the trial court agreed that 2200 Carnegie

did not receive proper notice, but refused to dismiss the complaint. Instead, it remanded the case to the BOR "with instructions to send notice of the board of education complaint to the property owner pursuant to R.C. 5715.19(B)." 2200 Carnegie did not appeal this decision. On remand, the BOR issued notice of the complaint, heard the matter, and valued 2200 Carnegie at the purchase price of the October 2006 sale.

2200 Carnegie now argues that the court had no authority to remand the case to the BOR once it made the initial determination that the auditor failed to give 2200 Carnegie the required statutory notice under R.C. 5715.19(B). But again, it did not appeal this decision when it was made.

In *Knickerbocker Properties, Inc. XLII v. Delaware Cty. Bd. of Rev.*, 119 Ohio St.3d 233, 2008-Ohio-3192, 893 N.E.2d 457, the supreme court clearly established that failure of a BOR to provide proper notice to a property owner is not in and of itself a jurisdictional defect. Similar to the facts in this case, Knickerbocker's property value was increased based on a recent sale. At no time, however, was Knickerbocker provided proper notice of the complaint or the valuation hearing because the complainant, a local board of education, put an incorrect address on the complaint — an address that the board of revision in turn used. Knickerbocker sought reversal of the valuation on the grounds that the board of review had no jurisdiction over the complaint because the

complainant board of education failed to properly invoke jurisdiction by using the wrong address on the complaint. The supreme court rejected the argument that jurisdiction of the board of review was not properly invoked because of the defective address.

In the case at bar, the BOE had no defects in its complaint, therefore jurisdiction was properly invoked. The auditor's office simply failed to provide notice to 2200 Carnegie.

Furthermore, the circumstances leading to reversal in *Knickerbocker* are not present in this case. *Knickerbocker* appealed the valuation increase to the board of tax appeals (BTA) arguing that it had not been provided proper notice of the BOR hearing and was thus unable to participate in the hearing. *Knickerbocker* asked the BTA to remand the case to the BOR. The BTA instead adopted the valuation. Noting that the responsibility for providing proper notice rests with the board of review, the supreme court held that "even though the BOE's complaint invoked the BOR's jurisdiction as a general matter, the BOR's use of the wrong address when it attempted to give notice of the hearing resulted in both a failure to afford due process rights in holding the hearing and a lack of authority to order the value increase based on that hearing. We therefore reverse and remand so that the BOR *may properly notify Knickerbocker and hold a new hearing on the complaint.*" *Id.* at ¶2. (Emphasis added.) The remedy set

forth by the court in *Knickerbocker* is exactly what happened in the case at bar. The trial court reversed the initial valuation and ordered the BOR to provide proper notice to 2200 Carnegie and hold a new hearing to rule on the case. Any due process concerns or issues of authority were thus remedied by the April 16 hearing. 2200 Carnegie's first assignment of error should be overruled.

2200 Carnegie also argues that the court should have dismissed the proceedings following remand because the school district failed to certify a complete transcript of the record to the court in the second appeal to the court. 2200 Carnegie cites to no authority for the proposition that the board's filing of an incomplete transcript deprives the court of jurisdiction. I would therefore find that this argument also lacks merit.

