

IN THE SUPREME COURT OF OHIO

BEECHWOOD II, L.P., : On Appeal from the Clermont County
Appellant, : Court of Appeals, Twelfth Appellate
: District
: Court of Appeals Case No.
: CA2011-04-033

vs. :

CLERMONT COUNTY BOARD OF : Supreme Court Case No. 11-2053
REVISION, et al.
Appellees. :

MEMORANDUM IN RESPONSE ON BEHALF OF APPELLEES,
CLERMONT COUNTY BOARD OF REVISION, ET AL.

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EXPLANATION OF WHY THIS CASE IS NOT A CASE OF
PUBLIC OR GREAT GENERAL INTEREST AND DOES NOT INVOLVE
A SUBSTANTIAL CONSTITUTIONAL QUESTION

Appellant Beechwood II, L.P., (Beechwood) would have this Court believe that the failure of the Clermont County Board of Revision, Clermont County Common Pleas Court and the Clermont County Court of Appeals Twelfth Appellate District have all erred in adopting the value actually supplied by Beechwood, \$10,100,000. As was noted by the Court of Appeals, “Nor does the documentary evidence provide any indication of a transfer of tax credits. (Decision pg 7 ¶27).

Beechwood or its representative signed and supplied the conveyance fee statement that the consideration paid for the real estate was \$10,100,000 with no portion of the purchase price paid for items other than real property. There is nothing that should take this case outside the holding of this Court in *Berea City School District Board of Education v. Cuyahoga County Board of Revision, et al.*, 106 Ohio St 3d 269, 2005-Ohio-4907, 834 N. E. 2d 782. Beechwood purchased the property in an arm’s length transaction in May, 2008 and the property should be valued at the purchase price for tax purposes for tax year 2009.

As the Clermont County Board of Revision and both reviewing courts have found that the 2009 valuation of \$10,100,000 placed on Beechwood's property by the Clermont County Auditor was based on the sale price of a recent arm's length transaction the case does not present a constitutional violation for review. Jurisdiction should be declined.

STATEMENT OF THE CASE AND FACTS

Appellant Beechwood is the record owner of Clermont County Auditor's Parcel Number 41-31-11A-089 consisting of a 184 unit apartment complex. The Appellant purchased the property for \$10,100,000 with the conveyance being processed by the Clermont County Auditor on May 8, 2008. A conveyance fee statement was signed by or on behalf of the Appellant indicating the transaction was an arm's length transaction and that no portion of the purchase price was paid for items other than real property.

Appellant Beechwood appeals from the decision of the Clermont County Board of Revision in Case No. 2009-531 entered July 8, 2010, where the Board of Revision voted not to change the 2009 tax year valuation of \$10,100,000 for the property. The 2009 tax year valuation was a carry over valuation from the Board of Revision's decision in Case No. 2008-944 where pursuant to a complaint filed

by the West Clermont Board of Education the valuation was determined to be \$10,100,000 for tax year 2008 based upon the May 8, 2008 sale of the property. The decision on the 2008 tax year has been appealed to the Ohio Board of Tax Appeals in Case No. 2009-K-1852 which is still pending before the Board of Tax Appeals.

The Appellant appealed the tax year 2009 decision to the Clermont County Court of Common Pleas where the court found that the \$10,100,000 sale price of the property accurately reflected the value of the property and that the May 2008 sale was recent and an arm's length transaction and affirmed the decision of the Clermont County Board of Revision.

On appeal, the Court of Appeals for Clermont County affirmed ruling that the Commons Pleas Court did not abuse its discretion by failing to reduce the purchase price by the alleged tax credits, not allowing additional evidence and did not abuse its' jurisdiction in finding the recent sale to be the value of the property. Judgment was entered October 24, 2011. A notice of appeal was filed on December 8, 2011.

ARGUMENT IN RESPONSE TO PROPOSITIONS OF LAW

Appellant's Proposition of Law No. I: A recent arm's length sale price as listed in a conveyance form is not reliable evidence of value for low income tax credit eligible property when the subject credits and restrictions were created after the sale closed.

In its first proposition of law, Beechwood argues that the May 8, 2008 arm's length sale of its property was not reliable evidence of value for tax year 2009.

It is undisputed that the conveyance fee statement filed with the County Auditor signed by Beechwood or its representative reflects a purchase price of \$10,100,000 in May 2008. The only evidence presented at the hearing of the Clermont County Board of Revision was the testimony of an appraiser and her report.

R.C. 5713.03 states, "In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length

of time, either before or after the tax lien date, the auditor shall consider the sale price of such tract, lot or parcel to be the true value for taxation purposes.

This Court has ruled that R.C. 5713.03 creates a statutory mandate that precludes the use of appraisal valuation when a sale price has been offered that is both recent and arm's length. *Cincinnati School District Board of Education v. Hamilton County Board of Revision*, 127 Ohio St. 3d 63, 2010-Ohio-4907, 936 N.E. 2d 489.

The sale of the Beechwood real property occurred in May 2008, within seven months of the tax lien date for tax year 2009. This certainly qualifies as a reasonable length of time for purposes of R.C. 5713.03. This Court has held that an arm's length sale of real property more than a year from the tax lien date was not so remote in time as to preclude use of the sale price as valuation of the property. *Walter v. Knox County Board of Revision*, 47 Ohio St 3d 23, 546 N.E. 2d 932 (1989).

The valuation of Beechwood's real property was made pursuant to the sale price at an arm's length transaction. The first proposition of law is without merit.

Appellant's Proposition of Law No. II: When presented with a combined sale of real estate and the opportunity to qualify for federal low income housing tax credits, a board of revision must subtract the value of the tax credits from the purchase price to find the portion of the purchase price attributable to the real estate.

Beechwood's second proposition of law would have this Court reject *Berea* and not apply the best evidence of value, the \$10,100,000 purchase price of the real estate. This Court has consistently applied the logic that an arm's length sale price is the true value of the property despite other conditions, such as the property being encumbered by a long-term lease resulting in the seller receiving an elevated sales price. *Cleveland OH Realty I, LLC v. Cuyahoga County Board of Revision*, 121 Ohio St 3d 253, 2009- Ohio- 757, 903 N.E. 2d 622.

For the 2009 tax year valuation the Clermont County Auditor followed the mandate of R.C. 5713.03 and valued the property at \$10,100,000 in accordance with the recent arm's length sale of the property. This was the same sale price that was stated to be the amount paid by Beechwood for the real property only on the conveyance form filed May 8, 2008, with the Auditor. The Clermont County Board of Revision when presented with appraisal evidence determined it was

required to value the Beechwood real estate at its arm's length sale price in accordance with *Berea*. When Beechwood appealed the decision of the Board of Revision to the Clermont County Common Pleas Court the court affirmed the Board's decision and found that the \$10,100,000 sale price accurately reflected the value of the property and the May 2008 sale was an arm's length transaction. (Decision at pg 12). This determination was within the discretion of the court.

The valuation of the property was made pursuant to the sale price at an arm's length transaction. The second proposition of law is without merit.

Appellant's Proposition of Law No. III: After an owner of low income housing tax credit eligible property demonstrates that the Auditor's value is unreliable, the Auditor is required to present evidence justifying its valuation or the board of revision must reduce the real estate's valuation.

Beechwood's third proposition of law would have the Court again reject the holding in *Berea*. It is undisputed that the conveyance fee statement reflects a purchase price of \$10,100,000 in May 2008. The only evidence presented at the hearing of the Clermont County Board of Revision was the testimony of an appraiser and her report. The Board correctly rejected this evidence because it had

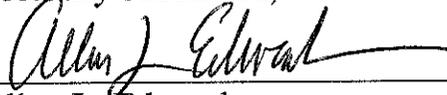
the evidence of the sale price. This was in accordance with this Court's determination that the uniform rule is that property should be valued in accordance with an actual sale price where there is a recent arm's length sale and when there is no such sale an appraisal should be prepared. *Cummins Property Serv. LLC v. Franklin County Board of Revision*, 117 Ohio St 3d 516, 2008- Ohio- 1473, 885 N.E. 2d 222.

The valuation of the property was made pursuant to the sale price at an arm's length transaction. The third proposition of law is without merit.

CONCLUSION

For the reasons discussed above, this case does not involve matters of public and great general interest. It does not offer a substantial constitutional question. The Appellee requests that this Court not grant jurisdiction to allow this case.

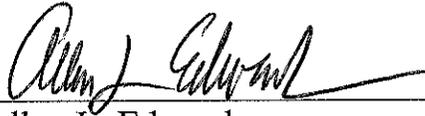
Respectfully submitted,

By: 
Allan L. Edwards

COUNSEL FOR APPELLEES
CLEMONT COUNTY BOARD OF REVISION
AND CLERMONT COUNTY AUDITOR

PROOF OF SERVICE

I certify that a copy of the above has been sent by ordinary U.S. mail to David C. DiMuzio, Attorney for West Clermont Local School District Board of Education, at his address of 810 Sycamore Street, Sixth Floor, Cincinnati, Ohio 45202 and to Jonas J. Greuenberg and Sasha Alexa M. VanDeGrift, Attorneys for Appellant, Beechwood II, L.P., at their address of Coolidge Wall, Co., L.P.A., 33 W. First Street, Suite 600, Dayton, Ohio 45402 on this 6th day of January, 2012.



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