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## INTRODUCTION

At the heart of this case is a question of fundamental fairness. The Eighth District's decision cuts off the statutory rights of property owners, boards of education, and political subdivisions who have committed no fault of their own. According to the Eighth District, a party may successfully complete all steps necessary to file a complaint in the Board of Revision challenging the taxable value of real property—steps that require strict compliance and contain multiple pitfalls—but lose the right to a hearing if the Auditor (who is a member of the Board of Revision) fails its duty to serve notice of the filing of the complaint upon the adverse party within 30 days. App. Op. ¶ 12. The law does not, and should not, permit such a result.

The fundamental misstep of the Court of Appeals is that it treated the statute at issue in this case as a jurisdictional requirement. It is not. The statute—R.C. 5715.19(B)—is merely directory, a cog in the mechanism of the statutorily engineered Board of Revision hearing process. The statute provides, in relevant part, that the County Auditor shall “give notice” to certain parties of the filing of a complaint against the value of their real property within 30 days. This 30-day rule is a “time marker” event—it starts the clock for the filing of a countercomplaint by the opposing party, and sets in motion the administrative timetable. Notably, notice of filing of a complaint is not required at all when the amount of valuation at issue is less than \$17,500. R.C. 5715.19(B). Thus, the statute cannot be a jurisdictional event—it does not even apply to many Board of Revision property valuation cases.

In contrast, the jurisdictional statutes in this process are R.C. 5715.12 and 5715.19(C), which provide for notice of hearing and an opportunity to be heard for due process purposes. The failure of notice under these statutes creates a deficit of personal jurisdiction, the consequences of which are spelled out below.

But a failure to meet the 30-day rule does not deprive the Board of Revision of jurisdiction. Instead when, as here, the party has actual notice and has an opportunity to be heard, the consequence of a failure to meet the 30-day rule should simply be a “do over.” Once notice of the complaint has been actually provided, the timing of the administrative process is simply reset, just as happened here.

But even if the failure to meet the 30-day rule were jurisdictional, the Court of Appeals should still be reversed. As this Court held over 100 years ago, the “law will not permit the diligent party to suffer” because of the “neglect or misconduct of an officer charged with a public duty.” *Cincinnati Traction Co. v. Ruthman*, 85 Ohio St. 62, 70 (1911).

This principle remains as robust today as it was 100 years ago. Indeed, a case of more recent vintage provides a ready road map for resolving the issues raised in this case. In 2008, the Court addressed the consequences of a County Auditor’s failure to provide sufficient notice to a property owner of a property-revaluation hearing. This Court held that because the notice sent by the Board of Revision failed to achieve service, the remedy was to vacate the offending order and remand to the Board of Revision for new notice and a new hearing. *Knickerbocker Properties, Inc. XLII v. Delaware Cty. Bd. of Revision*, 119 Ohio St.3d 233, 2008-Ohio-3192, ¶ 24. The Court stressed that the neglect of the Board of Revision to give notice was not attributable to the complainant, who had performed all necessary steps to successfully invoke the jurisdiction of the Board of Revision. *Id.* at ¶ 18.

This case is even more compelling to avoid foisting the Auditor’s mistake on a faultless party. Unlike *Knickerbocker*, the property owner here actually received notice of the hearing and attended it. And the property owner had actual notice of the complaint prior to the Board of

Revision hearing. The common pleas court appropriately ordered remand as compelled by *Knickerbocker*. Appx. at 12.

The Eighth District's decision reversing the trial court wrongly distinguished *Knickerbocker*, inappropriately applied principles of subject matter jurisdiction, and incorrectly ascribed jurisdictional force to the merely directory command to "give notice" in R.C. 5715.19(B). Each of these errors is inconsistent with this Court's precedent and basic fairness in tax proceedings.

When the Auditor or Board of Revision fails to carry out a statutory duty, the parties should not suffer as a result. The State of Ohio therefore urges the Court to reverse the court of appeals and affirm the order of the court of common pleas.

#### **STATEMENT OF AMICUS INTEREST**

The State has an interest in this case because it concerns the administrative process for resolving complaints against the value of real property stated on the tax rolls of all counties in Ohio. The State officer designated with oversight of taxation is Tax Commissioner Joseph Testa. His office is statutorily charged to "direct and supervise the assessment for taxation of all real property" in Ohio. R.C. 5715.01. In statewide tax matters, the Tax Commissioner is an expert and acts to ensure that tax laws are administered uniformly across the state. *Stanton, Pros. Atty., v. Tax Commission*, 114 Ohio St. 658, 667-668 (1926) ("the expert knowledge acquired by the commission [now Commissioner], and the intensive study it is able to give to questions of taxation, by reason of the frequent recurrence of such questions in the commission, result in a uniform and an efficient administration of matters of taxation which could not be attained by having those questions submitted to the various courts of common pleas of the state."). Cementing the Tax Commissioner's role as the statewide authority in matters of uniform administration of real property taxation, the General Assembly has provided that: "[t]o protect the public interests, the tax

commissioner may appear and upon his application be heard in any court or tribunal in any proceeding involving the appraisal, valuation, or equalization of real property for the purpose of taxation, or the assessment or collection of taxes.” R.C. 5715.37.

The State of Ohio, through the Tax Commissioner, has a strong interest in the outcome of this case as it will affect the rights of all people with a stake in the revaluation of real property for tax purposes. The process for revaluing real property is especially relevant now because in recent years revaluation requests have soared. *See, e.g., Sullivan, Total Tax Appeals Break the Record*, The Columbus Dispatch, (April 6, 2012) (record numbers of property owners request revaluation); *Sullivan, Schools Push Up Property Values*, The Columbus Dispatch, (March 11, 2012) (school districts double the amount of complaints filed to increase property values).

To ensure that property owners, political subdivisions, and all others with a stake in the valuation of real property get a full and fair opportunity to present their cases before the Boards of Revision and are not arbitrarily foreclosed from pursuing their rights, the State files this brief as amicus curiae, urging the Court to reverse the decision of the Eighth District Court of Appeals.

### **STATEMENT OF CASE AND FACTS**

2200 Carnegie, LLC (“Carnegie”), the appellee in this case, bought the relevant parcels in an arms-length sale for \$520,000. Appx. at 49, 86. The sale price was \$97,800 higher than the value of those parcels recorded on the taxable rolls of the County (\$422,200). Appx. at 91.

In 2007, the Board of Education of the Cleveland Municipal School District, the appellant here, filed a complaint against the valuation of the two parcels, seeking to increase the taxation-related value of those parcels to the sale price of \$520,000. Appx. at 44.

By letter dated April 27, 2007, the Board of Revision sent Carnegie notice that the Board of Education had filed a complaint requesting an increase in the assessed value of the parcels.

Appx. at 50.<sup>1</sup> But Carnegie claims it never received the letter. Appx. at 59. An agent of Carnegie filed an affidavit with the common pleas court, indicating that the organization had not received a copy of the April 27, 2007, letter. *Id.* The affiant did not aver that the letter was sent to an improper address or that the address contained errors. *Id.*

Several months later, on July 27, 2007, the Board of Revision sent another letter, this time to notify Carnegie of the hearing on the Board of Education's complaint scheduled for August, 30, 2011. Appx. at 60. Carnegie admits that it received this letter (Appx. at 59) and attached it to its motion to dismiss, filed the day of the August 30, 2007, hearing.<sup>2</sup> Appx. at 51-75.

Still, Carnegie did not request a continuance of the hearing after receiving notice of the hearing. Instead, Carnegie filed a motion to dismiss. Appx. at 51-75. Carnegie then appeared at the August 30, 2007, hearing. Appx. at 76. After the hearing, the Board of Revision granted the Board of Education's request to increase the property valuation.

Carnegie appealed to the common pleas court, arguing that the case should be dismissed because Carnegie did not receive the letter from the Board of Revision giving notice of the filing of the Board of Education's complaint.

The trial court remanded to the Board of Revision with instructions to send notice of the Board of Education's complaint to the property owner pursuant to R.C. 5715.19(B).” Appx. at 12. The court ordered that “after notice is properly given and jurisdiction is obtained,” the matter would proceed accordingly at the Board of Revision. *Id.* Carnegie did not appeal this order. *Id.*

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<sup>1</sup> The Court of Appeals held that the Board of Revision had not attempted to send this notice at all. App. Op. at ¶ 14. This appears to be incorrect. See pages 13-14, below.

<sup>2</sup> This fact—and the facts that the notice was postmarked August 14, 2007 (Appx. at 60-61), that Carnegie had prepared a detailed motion to dismiss (Appx. at 51-75), and that Carnegie appeared at the hearing (Appx. at 76)—contrast with the Court of Appeals holding that Carnegie had not received notice in time to request a continuance of the hearing. See App. Op. at ¶ 14.

On remand, Carnegie appeared at the hearing with an attorney (a corporate officer) and presented its case on the merits. Appx. at 85-86. The record does not reflect that Carnegie challenged the jurisdiction of the Board of Revision.

Following this hearing, the Board of Revision granted the Board of Education's request to increase the property valuation. Appx. at 91. This time Carnegie appealed, and the common pleas court affirmed the Board of Revision's revaluation determination. Appx. at 93.

Carnegie further appealed to the Eighth District. In a split opinion, the appeals court reversed and held that the Board of Revision had lacked jurisdiction due to the failure of the Auditor to timely serve notice of the filing of the compliant. App. Op. at ¶ 12. The majority opined that *Knickerbocker* was distinguishable. The dissenting opinion found *Knickerbocker* controlling and would have affirmed the actions of the trial court. *Id* at ¶ 23, (Stewart, J. dissenting).

## ARGUMENT

The State advocates no position with regard to the Board of Education's second proposition of law. As to the legal concepts in the Board's first proposition, the State offers the following two propositions.

### **Amicus Curiae State of Ohio's Proposition of Law No. 1:**

*Notice of filing of a complaint under R.C. 5715.19(B), is merely directory and therefore has no jurisdictional consequences when notice and opportunity to be heard are given.*

The Eighth District held that the Auditor's duty to give notice of the filing of a complaint within 30 days under R.C. 5715.19(B) is a jurisdictional bar to the Board of Revision's proceedings. It is not. That statute requires notice so as to promote the orderly processing of tax valuation cases. This is a directory rule. Different statutes—R.C. 5715.12 and R.C. 5715.19(C)—provide the service requirements that trigger personal jurisdiction in these matters.

The difference between the jurisdictional statutes (R.C. 5715.12 and R.C. 5715.19(C)) and the directory statute (R.C. 5715.19(B)) is best understood in reference to the whole statutory process for Board of Revision determinations of property-valuation complaints. To initiate the process, R.C. 5715.19(A) provides that parties may file complaints against the valuation of real property as it appears on the tax rolls of the County “before the thirty-first day of March of the ensuing tax year,” and only once for each “interim period.”

Once a complaint has been filed, R.C. 5715.19(B) requires the Auditor to “give notice” “[w]ithin thirty days after the last date such complaints may be filed” to certain specified persons, including the Board of Education and the property owner, when the amount of valuation at issue is at least \$17,500. When the alleged undervaluation is less than \$17,500, no notice to the property owner of the complaint is required. This notice starts the time period in which adverse parties may file a countercomplaint, which must be filed “[w]ithin thirty days after receiving such notice [of the complaint].” *Id.*

R.C. 5715.19(C) governs the time period for a hearing and a decision. A hearing must be held and a decision rendered within 90 days of the filing of the complaint (where no countercomplaint has been filed), or within 90 days from the filing of any countercomplaint. In either case, the Board of Revision must give notice of the hearing date, by certified mail, no fewer than 10 days before the hearing.

R.C. 5715.20 provides that the Board of Revision must send its decision by certified mail to the property owner and the complainant. The mailing of this certification begins the parties’ time to appeal. R.C. 5715.20. The parties (and a few other persons) may then appeal to the Board of Tax Appeals or the Court of Common Pleas within 30 days of this notice. R.C. 5717.01; R.C. 5717.05.

The 30-day rule for giving notice of a complaint in R.C. 5715.19(B) is directory because it functions only to set certain timing requirements, and because it does not require any service for valuation differentials under \$17,500. “As a general rule, a statute providing a time for the performance of an official duty will be construed as directory so far as time for performance is concerned, especially where the statute fixes the time simply for convenience or orderly procedure.” *Hardy v. Del. County Bd. of Revision*, 106 Ohio St.3d 359, 2005-Ohio-5319, ¶ 22 (quoting *State ex rel. Ragozine v. Shaker*, 96 Ohio St.3d 201, 2002-Ohio-3992, ¶ 13, and *State ex rel. Jones v. Farrar*, 146 Ohio St. 467, (1946) paragraph three of the syllabus).

R.C. 5715.19(B)'s 30-day rule is merely a timing rule for the efficient handling of Board of Revision revaluation cases. The statute also provides that the property owner is a party to the case, which further suggests that notice failure does not create a jurisdictional defect particularly, as here, if the property owner got notice of the complaint and actually appeared at the hearing.

In these situations, the Auditor's failure to give notice is little more than the failure to carry out a statutory ministerial act. The only prejudice to the adverse party is a delayed hearing. Here, the property owner lost no rights; Carnegie could still appear and participate in the hearing and file a countercomplaint. The remedy is simply to reset the clock by resending notice. This is easily accomplished, and it was done in this case. There is no need to frame this as a problem of jurisdiction.

Treating the 30-day rule as directory also comports with this Court's tax precedents. In *Hardy*, the Auditor failed to timely notify the property owners of his intent to remove their parcel from the agricultural land list (with its lower tax rates). *Hardy*, 2005-Ohio-5319 at ¶ 15. The Court held that the statute was merely directory and that, with notice, the Auditor could still remove the property from the agricultural tax list. *Id.* at ¶ 22. The Court explained that the

statute “does not indicate any intent on the part of the General Assembly to restrict the ability of the county auditor to remove lands from [agricultural land] status if the deadline is missed. Instead, the notice requirement in the statute is intended to give property owners sufficient time to challenge the auditor’s conclusion.” *Id.* at ¶ 23; *see, also, id.* at ¶ 22 (deadline in *Ragozine* “directory, not mandatory” and trial court’s “failure to meet the deadline did not deprive it of jurisdiction to hear the case”).

The *Knickerbocker* decision points the same way. There, although the Auditor failed to send notice to the right address, the Court noted that no harm was done—the property owner had “actual” notice in time to file a counterclaim. *Knickerbocker Props.*, 2008-Ohio-3192 at ¶ 16 n.2. And the Court identified the core purpose of R.C. 5715.19(B)—“to give notice of the filing of the complaint so that other persons may file counterclaims.” *Id.* In short, R.C. 5715.19(B) requires service only to protect the timing of counterclaims and hearings. It is not jurisdictional.

In contrast, R.C. 5715.12 and R.C. 5715.19(C) serve to protect parties’ core due process rights to notice and an opportunity to be heard. These were the statutes the Court considered jurisdictionally significant in *Knickerbocker*. These statutes “create the obligation to notify the owner,” and notice served thereunder is evaluated against due process principles. *Knickerbocker Props.*, 2008-Ohio-3192 at ¶ 17.

In *Knickerbocker*, the Board of Revision failed to use service “reasonably calculated” to reach the property owner and as a consequence the property owner never received notice of the hearing and never appeared. *Id.* at ¶ 5, 17. This failure of notice and opportunity to be heard was in *direct* contravention of R.C. 5715.12, which forbids the Board of Revision from increasing the value of property without notifying the owner. *Id.* at ¶ 15.

By contrast, due process concerns are not implicated by the Auditor's failure to send notice under R.C. 5715.19(B) especially if, as here, the property owner had notice and an opportunity to be heard under R.C. 5715.12. In this case, the property owner *had* actual notice and an opportunity to be heard as required by R.C. 5715.12 and 5715.19(C). Carnegie received actual notice of the complaint (when it received notice of the hearing) and knew of the hearing prior to the hearing date. Appx. at 59. What is more, the property owner appeared at the hearing. Appx. at 76. And the handwritten notes from the hearing suggest that the hearing had been extended for 30 days to allow the property owner to submit evidence in support of its position (the same extension necessary for the filing of a countercomplaint). *Id.*

Accordingly, there was no failure in this case to apprise interested parties of the action and afford them an opportunity to present their objections. Carnegie had notice and an opportunity to be heard according to the requirements of R.C. 5715.12 and 5715.19(C).

If Carnegie were prejudiced at all by the failure to receive notice within 30 days, it would have been due to having less time to defend against the complaint. But Carnegie has never claimed that it was prejudiced. Moreover, that injury would be easy to fix—Carnegie would simply be given more time to respond to the complaint. And that is exactly what happened. Simply stated, Carnegie can show no prejudice on this set of facts.

Treating R.C. 5715.19(B) as non-jurisdictional also squares with this Court's longstanding precedent in non-tax cases holding that a party should not lose a right through the inaction or negligence of a public body in performance of that body's mandatory duty. In *Cincinnati Traction*, a party obtained an approved bill of exceptions from the trial court. *Cincinnati Traction Co.*, 85 Ohio St. at 68. Similar to a modern notice of appeal, this bill was necessary to prosecute the party's appeal, but under the existing law, was required to be certified by the trial

judge. In that case, the judge unintentionally omitted his signature from the bill, and the appellate court dismissed the appeal. *Id.* On review, this Court held that it was a rule of “general” if not “universal application” that “where a party in the prosecution of a right does everything which the law requires him to do, and fails to attain his right wholly by the neglect or misconduct of an officer charged with a public duty with respect thereto, the law will not permit the diligent party to suffer detriment by reason of such neglect.” *Id.* at 70.

The Court reaffirmed this rule more recently in *Cobb v. Cobb*, 62 Ohio St.2d 124, 126 (1980). There, the court of appeals had dismissed the appeal for failure to demonstrate error on the basis that the record of the trial court proceedings was deficient. *Id.* at 125. This Court reversed, holding that the appellants had done everything required of them, and the fault was the clerk’s for failing to transmit the record on appeal. *Id.* at 125-26. The Court ultimately concluded that appellants should not suffer because of the nonfeasance of the clerk. *Id.* The same result should obtain in this case. The Board of Education should not be penalized for the Auditor’s failure to send a 30-day letter to the proper address.

**Amicus Curiae State of Ohio’s Proposition of Law No. 2:**

*A Board of Revision must give notice and an opportunity to be heard to a necessary party of real property valuation proceedings in order to obtain personal jurisdiction. If it does not, the resulting lack of jurisdiction over the person may be corrected by vacating the offending order and permitting the party’s participation in a new hearing.*

**A. Under *Knickerbocker* the actions of an official may not irretrievably deprive a complainant of the right to challenge a real-property valuation.**

Even if the Court finds that the 30-day rule in R.C. 5715.19(B) is jurisdictional, instead of directory, the Eighth District’s decision should still be reversed.

The Court’s recent decision in *Knickerbocker* addressed the issues raised in this case under remarkably similar facts. In that case, the Board of Education initiated the suit by filing a complaint seeking to increase the value of a parcel of real property. *Knickerbocker Props.*,

2008-Ohio-3192 at ¶ 3. The Board of Revision attempted, but failed to perfect, service of the notice of hearing on the property owner. The notice (along with the notice of filing of the complaint) had been sent to the wrong address. *Id.* at ¶¶ 4-6. Although the property owner obtained actual notice of the filing of the complaint, it never received notice of the hearing and, consequently did not attend the hearing. *Id.* at ¶ 5.

On appeal, the property owner claimed that the failure of service—caused by the Board of Education’s improper address listing on the complaint—mandated dismissal of the case. *Id.* at ¶ 10. Dismissal was appropriate, the property owner argued, because the lack of notice meant a lack of jurisdiction. *Id.* at ¶ 1. This Court disagreed, distinguishing errors of litigants from errors of officials. When a statute requires a *litigant* to take certain actions to trigger jurisdiction, those actions are mandatory and failure to comply warrants dismissal. *Id.* at ¶ 10. But where no statute requires the litigant—like the Board of Education in *Knickerbocker*—to provide the property owner’s address on the complaint, dismissal is improper. *Knickerbocker Props.*, 2008-Ohio-3192 at ¶ 14. In these kinds of appeals, the Court explained, the statutory duty to notify the property owner is a duty of the Board of Revision. *Id.* at ¶ 12. The Board of Revision’s error was not chargeable against the Board of Education.

Stated in familiar jurisdictional concepts, *Knickerbocker* says: a properly filed complaint confers subject matter jurisdiction on the Board of Revision to hear the case; when the Board of Revision does not perfect actual notice to the property owner of the hearing, the question is one of personal jurisdiction; the remedy for an order of the Board of Revision obtained in the absence of personal jurisdiction is remand for and a new hearing held after proper service of notice. *Id.* at ¶ 24.

*Knickerbocker* controls this case. The court of appeals should have held that the common pleas court acted properly in remanding the case for new notice and hearing, and should have affirmed the Board of Revision's determination of value, which was not appealed.

Instead of following *Knickerbocker*, however, the Court of Appeals tried to distinguish it, concluding that (1) unlike *Knickerbocker* "there was no attempt at notifying the property owners that a valuation complaint was filed" and (2) unlike *Knickerbocker*, notice was not provided in time for the proper party "to request and be granted a continuance of the hearing." App. Op. at ¶ 14. These conclusions fail both as a matter of law and fact. As a legal matter, the possible lack of personal jurisdiction attributable to the Board of Revision's failure to obtain actual notice cannot be held against the complainant and could be cured by remand. And both asserted factual distinctions are unsupported—indeed, contradicted—by the record.

First, the Board of Revision *did* attempt to give timely notice of the filing of the complaint under R.C. 5715.19(A)(1). A notice letter was sent on April 27, 2007, which was within the 30-day window of the complaint's filing (which occurred on March 31, 2007). Appx. at 50. Carnegie does not claim that no notice was sent, only that it did not receive the letter.

Second, just as in *Knickerbocker*, Carnegie had *actual notice* of the complaint prior to the hearing and could have requested a continuance. Indeed, the record shows that Carnegie had time to prepare a detailed motion and affidavit. It therefore had sufficient time to file for a continuance of the hearing date. But moreover, the record reflects that Carnegie actually appeared at the hearing, and it certainly could have requested a continuance then and there. Appx. at 76.

In short, the record belies both of the facts that the Eighth District thought distinguished this case from *Knickerbocker*.

But there is more. Here, the lack of notice was *less* prejudicial to the property owner than in *Knickerbocker*. In *Knickerbocker*, the Board of Revision’s failure was absolute—the property owner never got notice of the hearing or an opportunity to be heard as required by R.C. 5715.12 and 5715.19(C). *Knickerbocker Props.*, 2008-Ohio-3192 at ¶ 5. But here, the property owner had actual notice of the complaint and received actual notice of the hearing prior to the hearing date. Carnegie even appeared at the hearing. Appx. at 76.

The court of appeals should have followed *Knickerbocker* and affirmed the order of the court of common pleas.

**B. Any defect in personal jurisdiction before the Board of Revision may be corrected through remand.**

Starting in 2002, this Court has consistently held that remand is the proper remedy for a Board of Revision’s failure to comply with a notification duty. In *Cleveland Elec. Illum. Co. v. Lake County Bd. of Revision*, 96 Ohio St.3d 165, 168, 2002-Ohio-4033, ¶ 22, the Court remanded for the Board of Revision to certify a copy of its decision to the necessary parties and for the BTA to proceed to hear the appeal.<sup>3</sup>

Next, in *Gasper Twp. Bd. of Trustees v. Preble Cty. Budget Comm.*, 119 Ohio St.3d 166, 2008-Ohio-3322, ¶ 15, the township trustees had properly filed their notice of appeal, but the Budget Commission (performing an administrative role similar to that of a Board of Revision) failed to serve notice on all necessary parties. The remedy, according to the Court, was to vacate the Board of Tax Appeal’s dismissal order and remand so that proper notice could be given and a new evidentiary hearing held. *Id.*

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<sup>3</sup> *Cleveland* did break from earlier precedent by “modif[ying]” the rule of *Cincinnati Sch. Dist. Bd. of Educ. v. Hamilton County Bd. of Revision*, 87 Ohio St.3d 363, 367 (2000). See, e.g., *MB West Chester, L.L.C.*, 2010-Ohio-3781 at ¶ 25.

After that, the Court addressed a Board of Education's argument that a Board of Tax Appeals decision must be vacated because no notice of appeal was provided to the Board of Education by the Board of Revision pursuant to R.C. 5707.01. *MB West Chester, L.L.C. v. Butler County Bd. of Revision*, 126 Ohio St.3d 430, 2010-Ohio-3781, ¶¶ 1, 5. The Court held that the Board of Revision's failure to send notice to the Board of Education violated the Board of Education's statutory rights, and that the ensuing order of the Board of Tax Appeals was a nullity. *Id.* at ¶ 29. As in *Gasper*, the remedy was remand to include the party excluded by the failed notice. *Id.* at ¶ 38. The Court held that "when a statutory party has been unlawfully deprived of notice of both the BTA proceedings and the BTA decision, that party has not waived its right to participate, and the BTA has not lost jurisdiction to vindicate it." *Id.* at ¶ 24

And in *Knickerbocker*, as already discussed, the Court—speaking to a misaddressed notice—reversed and remanded for proper notice and a new hearing. *Knickerbocker Props.*, 2008-Ohio-3192 at ¶ 24.

The consistent refrain of these cases is that when the Board of Revision fails to effectuate proper notice, the failure can be remedied by remand for new notice and a new hearing. In this case, that is precisely the remedy ordered by the court of common pleas.

**C. The Court of Appeals erroneously relied on principles of subject matter jurisdiction.**

One unmistakable lesson from *Knickerbocker* is that defects in subject matter and personal jurisdiction have different consequences in Board of Revision and similar cases. *Knickerbocker* is consistent with this Court's precedents. Yet, contrary to the consistent theme of this Court's precedents ordering remand to correct errors of statutory notice in tax cases, the Eighth District erroneously invoked principles of subject matter jurisdiction. And it did so by citing a string of BTA decisions. *See* App. Op. at ¶ 13 (citing cases).

But all of those BTA cases dealt with the failure of the *complaint* to meet the requirements of R.C. 5715.19. The jurisdiction conferred by filing a complaint is subject matter jurisdiction, not the personal jurisdiction triggered by service of certain notices. *See, e.g., Elkem Metals Co. P'ship v. Wash. County Bd. of Revision*, 81 Ohio St.3d 683, 686-687 (1998) (analyzing the required components of a complaint filed in the Board of Revision as an issue of subject matter jurisdiction); *Kalmbach Wagner Swine Research Farm v. Bd. of Revision*, 81 Ohio St.3d 319, 324 (1998) (same); *accord, IBM Corp. v. Bd. of Revision*, 2006-Ohio-6258, ¶ 10 (10th Dist.) (compliance with timely filing requirement of R.C. 5715.19 was necessary to confer subject matter jurisdiction). The remedy for a lack of subject matter jurisdiction is outright dismissal of the case. *Buckeye Foods v. Cuyahoga County Bd. of Revision*, 78 Ohio St.3d 459, 460 (1997) (citing *New Boston Coke Corp. v. Tyler*, 32 Ohio St.3d 216, 218 (1987) and *U.S. v. Storer Broadcasting Co.*, 351 U.S. 192, 197 (1956)); *see also, State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 75, (1998).

Here, the Board of Education's complaint contained no defect that would have stripped the Board of Revision of subject matter jurisdiction, and no one has argued that it did. Instead, the asserted defect is—at most—one of personal jurisdiction. But that defect—as this Court has held repeatedly—can be cured by remand. *Knickerbocker Props.*, 2008-Ohio-3192 at ¶ 24; *MB West Chester, L.L.C.*, 2010-Ohio-3781 at ¶ 38; *Cleveland Elec. Illum. Co.*, 2002-Ohio-4033 at ¶ 22.

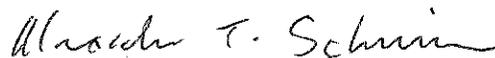
Because this case does not concern a deficiency in the *complaint*, the subject matter jurisdiction of the Board of Revision is not at issue. There is no dispute that the complaint filed by the Board of Education substantially complied with the requirements of R.C. 5715.19. Therefore, outright dismissal of the complaint—as the Eighth District ordered—was improper.

**CONCLUSION**

For these reasons, the Court should reverse the judgment below.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Merit Brief of *Amicus Curiae* State of Ohio in Support of Board of Education of the Cleveland Municipal School District was served by U.S. mail this 14th day of May, 2012, upon the following counsel:

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Cuyahoga County Fiscal Officer (f/k/a  
Auditor) and Cuyahoga County Board  
of Revision

  
\_\_\_\_\_  
Alexandra T. Schimmer  
Solicitor General

*Admin appeal - get dates*  
*reply 3.22*  
**FILED**

COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

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GERALD E. FUERST  
CLERK OF COURTS  
CUYAHOGA COUNTY

2200 CARNEGIE, LLC	)	CASE NO. CV-09-702890
	)	
Appellant	)	JUDGE BRIDGET M. McCAFFERTY
	)	
vs.	)	
	)	
CUYAHOGA COUNTY BOARD	)	
OF REVISION, et al.	)	On appeal from the Cuyahoga
	)	County Board of Revision
Appellees	)	

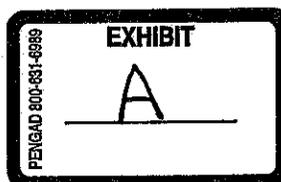
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BRIEF OF APPELLEE, BOARD OF EDUCATION OF  
THE CLEVELAND MUNICIPAL SCHOOL DISTRICT

---

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District



I. STATEMENT OF THE CASE AND FACTS

This matter is before the Court on appeal from a decision by the Cuyahoga County Board of Revision and concerns the valuation of two parcels of real property for purposes of ad valorem taxation. The property has been identified by the County Auditor as permanent parcel numbers 103-16-029 and 103-06-030, is owned by Appellant, 2200 Carnegie, LLC, and the relevant tax year is 2006. Transcript on Appeal, filed by the Board of Revision on February 18, 2010.

The record shows that the Auditor originally valued the property at \$422,200 (both parcels) for tax year 2006. Then on March 27, 2007 the Board of Education of the Cleveland Municipal School District ("BOE") filed a complaint with the Board of Revision seeking a new value of \$520,000, the basis for which was a sale that had occurred on October 16, 2006. Exhibit A to Transcript on Appeal.

The complaint came before the Board of Revision for hearing and the BOE's increase request was granted. As noted by Appellant in its brief, this decision was appealed by 2200 Carnegie, LLC to the Court of Common Pleas, being the matter captioned *2200 Carnegie, LLC v. Cuyahoga County Board of Revision, et al.*, Cuyahoga County Common Pleas Case No. CV-07-641119. Brief of Appellant, third page, paragraph 3.

On September 8, 2008 Judge John J. Russo issued a decision in case 641119, stating:

The 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.

A copy of Judge Russo's Journal Entry is attached hereto as Exhibit 1.

No appeal was taken from this decision, and the matter was remanded to the board of revision. The board sent notice to the property owner as required, the property owner filed a counter-complaint, and both the BOE's complaint and the counter-complaint came before the board of revision for hearing. Exhibit E to Transcript on Appeal. August 6, 2009 the Board of Revision again issued a decision, and again valued the property at the \$520,000 sale price. Exhibit F to Transcript on Appeal.

The property owner, 2200 Carnegie, LLC, has now appealed this decision by the Board of Revision to the Court of Common Pleas. In its brief, it neither disputes nor addresses the validity of the sale, nor makes any argument that the sale price should not be accepted as value. Instead, Appellant argues that the Board of Revision was without jurisdiction as it failed to give it timely notice of the BOE's complaint. Brief of Appellant, Assignment of Error #1. Appellant further argues that the Board of Revision failed to certify a copy of the record before it to this Court, and as a result the Court should vacate the decision by the Board and remand "with instructions to proper[ly] certify a transcript of the proceedings." Brief of Appellant, Assignment of Error #2. For the reasons set forth below, the BOE submits that Appellant's arguments are without merit and the decision by the Board of Revision should be affirmed.

## II. LAW AND ARGUMENT

### A. THE RECENT ARM'S LENGTH SALE OF THE SUBJECT PROPERTY CONSTITUTES THE BEST EVIDENCE OF VALUE, AND MUST BE ACCEPTED FOR AD VALOREM TAX PURPOSES.

The undisputed evidence contained in the transcript establishes that the subject property was purchased for \$520,000 on October 16, 2006. Exhibit A to Transcript on Appeal. It is also beyond dispute that under Ohio law, a recent arm's length sale of real property is the best evidence of taxable value. *Berea City School District Board of Education v. Cuyahoga County Board of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, 834 N.E.2d 782; *Pingue v. Franklin County Board of Revision* (1999), 87 Ohio St.3d 62, 64, 717 N.E.2d 293; *Columbus Board of Education v. Fountain Square Assoc. Ltd.* (1984), 9 Ohio St.3d 218, 456 N.E.2d 894. As such, "there is a presumption that the sale price is the true indication of value unless an inference is raised that the sale was not an arm's length transaction or is not reflective of true value." *Board of Education of the Olentangy Local Schools v. Delaware County Board of Revision*, B.T.A. Case No. 00-S-1665 (December 7, 2001), page 5. Once evidence of a sale has been introduced, it is incumbent upon a party opposing the acceptance of the sale price to show that the sale resulted from some special circumstances and is not indicative of value. No such evidence was presented.

Based on both the undisputed evidence that the property at issue was the subject of a recent sale for \$520,000 and the law of Ohio, the BOE submits that the Board of Revision properly accepted the sale price as value. This decision should be affirmed.

B. JURISDICTION WAS PROPERLY VESTED IN THE BOARD OF REVISION AS NOTICE WAS GIVEN TO APPELLANT OF THE BOE'S COMPLAINT. RESPONSE TO APPELLANT'S ASSIGNMENT OF ERROR #1.

I. APPELLANT IS BARRED FROM CONTESTING THE JURISDICTION OF THE BOARD OF REVISION UNDER THE LAW OF THE CASE.

Appellant argues in its first assignment of error that the Board of Revision has no jurisdiction over the BOE's complaint as a result of the failure by the Board of Revision to send notice of the same to Appellant within the statutory time period. However, this same issue was previously addressed by Judge John J. Russo in case 641119, wherein the Court stated that jurisdiction would be obtained upon notice being given by the Board of Revision to 2200 Carnegie, LLC. See Exhibit 1 hereto. Regardless if the BOE agrees or disagrees with this decision, the fact is that the decision was made and no party appealed. The BOE submits that under the doctrine of the law of the case, Judge Russo's decision is final.

In 5 Ohio Jur.3d Appellate Review, §560 the doctrine of the law of the case was summarized 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)

The BOE submits this doctrine bars Appellant's present argument. Appellant previously appealed the board of revision's decision to the common pleas court, and Judge Russo reversed and remanded with instructions to the board of revision to send proper notice to Appellant. Judge Russo further ruled that jurisdiction would then be conferred upon the board of revision to proceed on the merits. The decision was not appealed, the matter was remanded to the board of revision, notice was given, and Appellant filed a counter-complaint. Appellant cannot now argue that regardless of Judge Russo's decision that jurisdiction was conferred upon the board of revision, his decision was wrong and the board of revision was without jurisdiction to proceed.

For this reason alone, Appellant's first assignment of error is without merit and the decision by the board of revision should be affirmed.

2. THE FAILURE OF THE BOARD OF REVISION TO GIVE NOTICE OF THE COMPLAINT WITHIN THIRTY DAYS DID NOT RENDER THE BOE'S COMPLAINT INVALID.

Even if it presumed for sake of argument that Appellant can contest the prior decision by the Cuyahoga County Court of Common Pleas in this appeal, Appellant's argument that the failure to give it notice of the BOE's complaint renders the complaint a nullity is without merit.

Appellant argues in its first assignment of error that it was required to be given notice of the BOE's complaint. The BOE agrees. Section 5715.19(B) of the Revised Code states that "within thirty days after the last date such complaints may be filed,

the auditor shall give notice of each complaint . . . to each property owner whose property is the subject of the complaint . . .” Plainly, the statute requires notice to be given, and in fact Judge Russo previously held the same. The question then becomes whether the failure of the auditor or board of revision to give the required notice within stated time period mandates dismissal of the complaint.

In arguing that dismissal is required, Appellant cites a number of opinions by the Supreme Court in which strict compliance was required. However, all of these opinions are concerned with the filing of a complaint, and not the subsequent notice provisions of R.C. 5715.19(B).

A case more similar to the one at hand was before the Ohio Board of Tax Appeals<sup>1</sup> in *Board of Education of the Delaware City Schools v. Delaware County Board of Revision*, B.T.A. Case No. 97-L-871 (unreported, February 5, 1999), 1999 WL 66543.<sup>2</sup> The Board stated on pages 16-17:

R.C. 5715.19(B) requires the auditor, not the complainant, to give notice of each complaint filed in which the value in dispute is at least \$17,500 to each property owner whose property is the subject of the complaint if the complaint was not filed by the owner, and to each board of education whose school district may be affected. The type of notice required by the county auditor is not prescribed in R.C. 5715.19(B). R.C. 5715.19(C) requires the boards to notify the property owner if his address is known, of the time and date of the hearing on the particular complaint before the boards of revision. In addition,

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<sup>1</sup>R.C. 5717.01 authorizes an appeal from a county board of revision to the Board of Tax Appeals. “[T]he common pleas court and the BTA fulfill the same function when reviewing a decision of a board of revision, and the BTA case law may be applied to the common pleas court proceedings in such appeals.” *Murray & Co. Marina, Inc. v. Erie County Board of Revision*, 123 Ohio App.3d 166, 172 (Erie County App. Ct., 1997), 703 N.E.2d 166.

<sup>2</sup>A copy of the Board’s decision is attached as Exhibit 2.

R.C. 5715.12 imposes a specific requirement that the BOR give notice to the property owner and an opportunity to be heard before increasing the value of any property. The notice can be served upon the owner of the property, or his agent, or by advertisement in accordance with R.C. 5715.12. The Board concludes that these statutes are procedural in nature and do not go to core jurisdiction. The failure to act by the Auditor or the BOR in accordance with the statute does not affect the ultimate jurisdiction of the BOR to consider the pending complaint. (Emphasis added)

Similarly, in *Buckeye Boxes, Inc. v. Franklin County Board of Revision*, 78 Ohio App.3d 634 (Franklin County App. Ct., 1992), 605 N.E.2d 992, the Court of Appeals addressed the question of whether a board of education could intervene where it had not been given the notice required by R.C. 5715.19(B). The Court answered the question in the affirmative, stating:

If this case was still pending before the board of revision, appellant would still have the right to file a complaint as it has not yet received notice of Buckeye Boxes' amended complaint. As this case is now pending before the Board of Tax Appeals, appellant has the right to intervene based upon its right to file a complaint before the board of revision.

*Buckeye Boxes, Inc.* at 996, 605 N.E.2d 992.

While both the Board of Tax Appeals and the Court of Appeals found that R.C. 5715.19(B) requires notice to be given, neither held that a failure to do so mandates dismissal of the complaint. Instead, both followed the obvious solution, being the same solution ordered by Judge Russo in the previous appeal of this case; namely, order notice be given and then allow the case to proceed. This is what was done in the case at hand. As a result, the board of revision had authority to rule on the BOE's complaint.

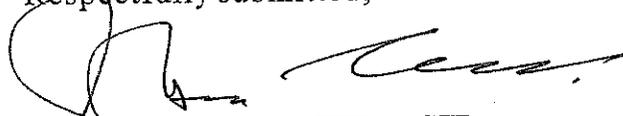
C. AS THE BOARD OF REVISION HAS CERTIFIED A TRANSCRIPT OF THE RECORD TO THIS COURT, APPELLANT'S REQUEST FOR A REMAND IS MOOT. RESPONSE TO APPELLANT'S ASSIGNMENT OF ERROR #2.

Appellant argues in its second assignment of error that since the Board of Revision failed to file its record with this Court, the matter should be remanded once again with instructions to the Board to prepare and certify the transcript to this Court. In response, the BOE would only note that on February 18, 2010 the Board of Revision filed with this Court its transcript of the proceedings before it. As a result, Appellant's assignment of error is now moot.

### III. CONCLUSION

For the reasons set forth above, the BOE submits that jurisdiction was vested in the Cuyahoga County Board of Revision, and its decision was supported by the evidence and the law of Ohio. As a result, the decision by the board should be affirmed.

Respectfully submitted,



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Municipal School District

CERTIFICATE OF SERVICE

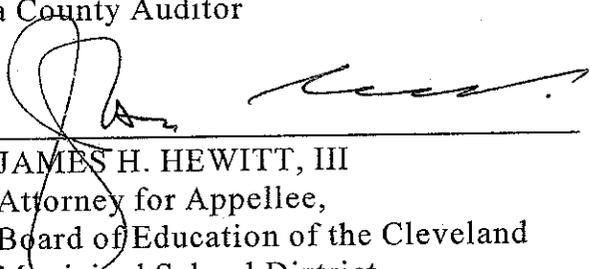
I hereby certify that a copy of the foregoing "Brief of Appellee, Board of Education of the Cleveland Municipal School District" has been served upon the following this 4 day of March, 2010 by ordinary U.S. mail delivery:

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Cuyahoga County Board of Revision  
and Cuyahoga County Auditor

  
\_\_\_\_\_  
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Board of Education of the Cleveland  
Municipal School District

# **EXHIBIT 1**



53416631

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

2200 CARNEGIE, LLC  
Plaintiff

Case No: CV-07-641119

Judge: JOHN J RUSSO

CUYAHOGA COUNTY BOARD OF REVISION, ET AL  
Defendant

**JOURNAL ENTRY**

96 DISP.OTHER - FINAL

THE 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.  
COURT COST ASSESSED TO THE DEFENDANT(S).

Judge Signature

09/06/2008

- 96  
09/05/2008

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GERALD E. FUERST, CLERK

# **EXHIBIT 2**

Board of Education of the	)	
Delaware City Schools,	)	
	)	CASE NO. 97-L-871
Appellant,	)	
	)	
vs.	)	
	)	
Delaware County Board of	)	(REAL PROPERTY TAX)
Revision, Delaware County	)	
Auditor, and Pamela H.	)	DECISION AND ORDER
and Donald E. Rankey, Jr.	)	
	)	
Appellees.	)	
	)	

APPEARANCES:

For the Appellant	-	Jeffrey A. Rich, Esq. Teaford, Rich & Wheeler 20 East Broad St. Columbus, Ohio 43215
For the County Appellees	-	Dale M. Wilgus, Esq. Delaware County Prosecutor Dane Gaschen, Asst. Cty. Pros. 15 West Winter Street Delaware, Ohio 43015
For the Appellee Property Owner	-	Stephen D. Martin, Esq. Manos, Martin, Pergram, & Browning 40 North Sandusky St., Ste. 200 Delaware, Ohio 43015-1995

ENTERED: February 5, 1999

Mr. Johnson, Ms. Jackson, and Mr. Manoranjan concur.

This cause and matter is before the Board of Tax Appeals as a result of a Notice of Appeal filed by the Board of Education of the Delaware City School District (hereinafter "BOE"). Appellant appeals a decision of the Delaware County Board of

Revision (hereinafter "BOR") dismissing the BOE's valuation complaint. This matter is now considered by this Board based upon the BOE's notice of appeal, the statutory transcript certified to this Board by the Delaware County Auditor ("Auditor"), a stipulation of facts and the briefs filed by counsel on behalf of the parties.

The stipulation of facts signed by the parties provides as follows:

"1. Delaware Realty & Properties, Ltd. obtained an undivided one-half (1/2) interest in the subject property by Quit-Claim Deed dated August 22, 1996 from Appellees Donald E. Rankey, Jr. and Pamela H. Rankey, who had obtained a 100% interest in the property by General Warranty Deed, also dated August 22, 1996, from Leo and Helen Real Estate, Inc.

"2. That at all times between the date of the aforesaid Quit-Claim Deed and the date the Complaint Against Valuation of Real Property was filed by Appellant Board of Education, title to the subject property was vested in Appellees Donald E. Rankey, Jr. and Pamela H. Rankey as the owners of an undivided one-half (1/2) interest and in Delaware Realty & Properties, Ltd. as the owner of an undivided one-half (1/2) interest.

"3. The Complaint Against Valuation of Real Property filed by Appellant Board of Education with respect to the subject property named as the owners thereof Appellees Donald E. Rankey, Jr. and Pamela H. Rankey, but did not name as an owner, Delaware Realty & Properties, Ltd.

"4. Appellee Auditor of Delaware County did not give Delaware Realty & Properties, Ltd. notice that a Complaint Against Valuation of Real Property had been filed with respect to the subject property.

"5. Appellee Board of Revision of Delaware County, Ohio did not give Delaware Realty & Properties, Ltd. notice of the hearing before the said Board of Revision with respect to the valuation of the subject property.

"It is so stipulated effective this 9th day of July, 1998."

Initially, the BOE filed a complaint with the BOR seeking an increase in valuation of the subject property from that determined by the Auditor for tax year 1996. The subject property is located at 26 N. Sandusky St., Delaware, Ohio. The BOR held a hearing on the complaint. Counsel for the BOE and counsel for the property owners Donald E. Rankey, Jr. and Pamela H. Rankey and Delaware Realty & Properties Ltd., an Ohio limited liability company (hereinafter "property owners"), appeared before the BOR. At the hearing, counsel for the BOE stated that the basis for the request for an increase in value of the subject property was an arm's length sale transaction to the Rankeys that occurred on August 27, 1996. A copy of the warranty deed from the August 27, 1996 sale was attached to the BOE's complaint. No other evidence was presented by the BOE.

Mr. Martin, counsel for the property owners then moved the BOR to dismiss the complaint pursuant to R.C. 5715.19(B). Mr. Martin presented his wife, Mrs. Deborah Martin. Mrs. Martin testified that she was the "managing manager" of Delaware Realty, and that she did not receive notice of the complaint filed by the BOE on the subject property. Mr. Martin and Mrs. Martin both testified before the BOR that an undivided one half interest in the

subject property had been sold by the Rankeys to Delaware Realty & Properties Ltd. on the same date the Rankeys acquired the property. A copy of the quit-claim deed was offered as evidence that an undivided one-half interest in the subject property had been transferred from the Rankeys to Delaware Realty & Properties, Ltd. The quit-claim deed indicated it was prepared by Mr. Martin's law firm, Manos, Martin, Pergram & Browning. Mr. Martin stated that Delaware Realty & Properties Ltd. still owned a one half interest in the subject property.

Mr. Martin testified that the sale was a two-step transaction that was exempt from the conveyance fee on the basis that the entire conveyance fee had been paid on the first transaction. Mr. Martin further testified that the second sales transaction was approved by the Auditor's office. No conveyance fee statement for the second transaction was presented and Mr. Martin stated that one was not required by the Auditor for the second sales transaction. Regarding the sales transaction, Mr. Martin testified before the BOR as follows:

"Mr. Martin: It was a two-step transaction. It was exempt on the basis that on the first transaction, the full fee had been paid and there was an affidavit filed in support of it. It was approved by the auditor's office. It was a condo transfer.

"Ms. Fox: What is the relationship between the Rankeys and you folks or Delaware Realty & Properties?

"Mr. Martin: We own property together and I represent the Rankeys.

"Ms. Fox: You're in business together?

"Debby Martin: Yes.

"Mr. Martin: Candidly, it was easier with the documents already having been done by the closing agent to do a quit-claim deed rather than redo the closing document to reflect the half.

"Ms. Fox: The tax bills go just to the Rankeys; is that true?

"Mr. Martin: Yes."

At the conclusion of the testimony, Mr. Martin, counsel for the property owners renewed his motion to dismiss the complaint for lack of jurisdiction pursuant to R.C. 5715.19(B). At the conclusion of the arguments by counsel for the parties, the BOR dismissed the complaint stating "(T)hey have not received notice." The BOR's decision letter stated that the case had been "dismissed" but did not state the specific basis for the dismissal. The BOE timely appealed to this Board asserting that the complaint before the Delaware County BOR had been improperly dismissed.

The first and fundamental issue to be resolved by this Board is whether the BOE's failure to list all of the property owners on the prescribed complaint form in the instant matter constitutes a basis for the dismissal of the original complaint by the BOR pursuant to R.C. 5715.19. R.C. 5715.19(A) sets forth the type of valuation complaints that can be filed, who can file the complaint, and when the complaints can be filed. R.C. 5715.19(B) and (C) are the notice provisions for property owners and provide as follows:

"(B) Within 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, 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 such owner, and to each board of education whose school district may be affected by the complaint. Within thirty days after receiving such notice, a board of education or a property owner may file a complaint in support of or objecting to the amount of alleged overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination stated in a previously filed complaint or objecting to the current valuation. Upon the filing of a complaint under this division, the board of education or the property owner shall be made a party to the action.

"(C) Each board of revision shall notify any complainant, and also the property owner, if his address is known, when a complaint is filed by one other than the property owner, by certified mail, not less than ten days prior to the hearing, of the time and place the same will be heard. The board of revision shall hear and render its decision on a complaint within ninety days after the filing thereof with the board, except that if a complaint is filed within thirty days after receiving notice from the auditor as provided in division (B) of this section the board shall hear and render its decision within ninety days after such filing."

The record indicates that the Rankeys initially acquired the subject property in an arm's length sale. Then, immediately after acquiring the subject property, the Rankeys transferred an undivided one-half interest in the subject property to Delaware

Realty & Properties, Ltd. Only the Rankeys are listed as the property owners on the Auditor's property record card. The testimony of the Martins at the BOR hearing confirms that only the Rankeys receive the subject's property tax bill, and that the Rankeys pay the tax bills.

The parties have stipulated that Delaware Realty & Properties did not receive notice of the filing of the complaint for valuation by either the Auditor or the BOR. However, the record from the BOR hearing does establish that both the Rankeys and Delaware Realty & Properties, Ltd. were represented at the BOR hearing by Mr. Martin as their legal counsel. The testimony of Mr. and Mrs. Martin at the hearing also indicates that both Mr. and Mrs. Martin are affiliated with Delaware Realty and that Mrs. Martin is the "managing manager." Mr. Martin further testified that Delaware Realty & Properties, Ltd. owns other properties with the Rankeys in addition to the subject property.

The property owners argue that the BOR is prohibited from asserting jurisdiction in the instant case because the BOE's complaint was defective on its face for not listing all of the subject's owners and because notice was not given to all of the property owners. The fundamental jurisdictional issue asserted is whether the original complaint was defective, and therefore void, because the BOE failed to list at question 1 of the DTE complaint form the names of all of the property owners.

R.C. 5715.19 sets forth the jurisdictional requirements for filing complaints regarding property valuations and common levels of assessment and further delineates the authority of the

county auditors and the boards of revision in reviewing such matters. The cases decided over the years interpreting R.C. 5715.19 have identified both procedural and core jurisdictional requirements and what is substantial compliance with the core jurisdictional requirements. Our review begins with Stanjim Co. v. Mahoning Cty. Bd. of Revision (1974), 38 Ohio St.3d 233, wherein a valuation complaint was dismissed by the BOR because it contained numerous omissions and the county board of revision could not determine the allegations of the complaining party.

The Stanjim decision was followed and construed by the Board of Tax Appeals in McGraw Edison Service Co. v. Bd. of Revision (Dec. 4, 1985), B.T.A. Case No. 82-B-1360, unreported. In McGraw, this Board recognized in its decision that "(a) form that is less than flawless may still be valid." McGraw, supra at 4. In Independence Board of Education v. Cuyahoga Cty. Bd. of Revision (August 14, 1992), B.T.A. Case Nos. 90-K-1517 and 90-K-1518, unreported, the jurisdictional sufficiency of a complaint filed with the Cuyahoga County BOR was also addressed. In that case this Board stated that it had consistently refused to vacate complaints before county boards of revision where the flaws contained in the complaint do not statutorily mandate such a result. Independence, supra at 3 citing Showe v. Franklin Cty. Bd. of Revision (April 7, 1986), B.T.A. Case No. 82-E-1108, unreported; Teeters Packing Co. v. Franklin Cty. Bd. of Revision (Dec. 4, 1985), B.T.A. Case No. 82-B-1358, unreported; and Lincoln Park Six Ltd. v. Franklin Cty. Bd. of Revision (Feb. 9, 1984), B.T.A. Case No. 80-B-270, et seq., unreported.

In Akron Standard Div. v. Lindley (1984), 11 Ohio St.3d 10, the Supreme Court reviewed the verification requirement for the filing of a petition for reassessment with the Tax Commissioner. The Court applied a "substantial compliance" test in determining not to dismiss an appeal for failure to comply with an appellate procedure statute. In Renner v. Tuscarawas Cty. Bd. of Revision (1991), 59 Ohio St.3d 142, the Supreme Court again reviewed core jurisdictional issues. In that case, the Supreme Court, following Akron Standard Division supra, held at page 144 as follows:

\*\*\*        \*\*\*        \*\*\*.        If the omitted requirement runs to the core of procedural efficiency, then the requirement is essential, the omission is not substantial compliance with the statute, and the appeal is dismissed.        \*\*\*        \*\*\*        \*\*\*.

"Here, the supplemental documents informed the board of the name and address of the Appellants, the parcel numbers, the taxing district (contained in the transcript of the hearing before the board), the exact nature of the appeal, and the relief requested. These documents supplied the same information as page two of the notice form. Thus, under Akron Standard Div., the omission of page two did not run to the core of procedural efficiency, the Renners substantially complied with the filing requirements of R.C. 5717.01, and their appeal may be heard."

More recently, the Supreme Court considered substantial jurisdictional compliance in Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision (1998), 80 Ohio St.3d 591. In that case the property owners filed complaints seeking a decrease in the valuation of certain utility property. In response to questions 7A

and 7B on DTE Form No. 1, the property owners stated that the fair market value and the taxable value were unknown. In response to question 7D on the complaint form, the property owners answered "decrease of at least \$50,000." In response to question 8 on DTE Form No. 1, the property owners responded that the reasons for the taxable value requested were "(t)o be determined."

The affected school boards filed motions to dismiss the complaints for lack of jurisdiction asserting that the property owners' responses to the questions on DTE Form No. 1 were incomplete and insufficient to confer jurisdiction with the Lake County BOR. The Lake County BOR dismissed the complaints for lack of jurisdiction. The property owners appealed to the BTA, and the Lake County BOR moved to dismiss the appeals. The BTA affirmed the Lake County BOR's dismissal of the complaints relying on the Supreme Court's decision in Stanjim, supra.

The Cleveland Electric Illuminating Co. appealed to the Supreme Court. The Supreme Court citing Akron Standard Div., supra; and Renner, supra, reiterated the need for substantial compliance, and that jurisdiction would confer on the complaint unless the omission went to the "core of procedural efficiency." The Court specifically noted in Cleveland Elec. Illum. Co., supra at 597:

"To comply with the core of procedural efficiency does not require that a complainant prove his case within the complaint. Indeed, R.C. 5715.19(G) requires that the complainant must 'provide to the board of revision all information or evidence within his knowledge or possession that affects the

real property that is the subject of his complaint.' \*\*\* \*\*

In the instant case, the property owners cite the Supreme Court's recent decision in Kalmbach Wagner Swine Research Farm v. Wyandot Cty. Bd. of Revision (1998), 81 Ohio St.3d 319 in support of their position. In that case, the Wyandot County BOR dismissed the property owner's complaint for refusing to provide income and expense statements for the subject property. The property owner appealed to this Board. The Board of Tax Appeals reversed the Wyandot County BOR and remanded the case for a determination of value based on the record before it. The Wyandot County BOR appealed this Board's decision to the Supreme Court arguing that under Stanjim, supra, the BOR could require a complainant to submit the requested income and expense statements for income producing property.

The Supreme Court affirmed the Board of Tax Appeals noting that the requirements of Stanjim had subsequently been tempered in Nucorp, Inc. v. Montgomery Cty. Bd. of Revision (1980), 64 Ohio St.2d 20. In discussing the jurisdictional requirements, the Supreme Court in Kalmbach, supra at 322, recited in part its holding in Nucorp as follows:

"While this court has never encouraged or condoned disregard of procedural schemes logically attendant to the pursuit of a substantive legal right, it has also been unwilling to find or enforce jurisdictional barriers not clearly statutorily or constitutionally mandated, which tend to deprive a supplicant a fair review of his complaint on the merits.'

(Emphasis added.) Id. at 22, 18 O.O.3d at 192, 412 N.E.2d at 948."

The Supreme Court also noted in Kalmbach, supra at 323, that under Stanjim, a complainant must sufficiently complete the complaint form to invoke the jurisdiction of the Board of Revision, but the relevant statutes and the prescribed complaint forms had significantly changed since the Court's review in Stanjim. The Supreme Court, citing Cleveland Elec. Illum. Co. v. Lake Cty. BOR, supra, concluded that although the taxpayers' failure to complete the approved forms sufficiently in Stanjim derailed that taxpayers' efforts to invoke jurisdiction, boards of revision can not require more information than the minimal jurisdictional requirements of R.C. 5715.13 and R.C. 5715.19. Kalmbach, supra.

In the instant case, the BOE did list one of the property's co-owners on the DTE Form No. 1 as that information was reflected on both the conveyance form and the property record card maintained in the Auditor's office. The BOE also identified the parcel number, the location of the subject parcel, and the date and price of the sales transaction that was the basis for the requested increase in value. The record reflects that the identity of Delaware Realty & Properties, Ltd. as the owner of an undivided one half interest in the subject property was not readily available or reflected on the auditor's property record card as of the date the complaint was filed.<sup>1</sup> The testimony of the Martins establishes

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<sup>1</sup>It is also observed that the subject property could have had other owners that were not known by the Appellant or the Auditor. For example, the Rankeys could have subsequently transferred an interest in their remaining one-half interest in the subject

that the subsequent transfer of the undivided one-half interest in the property was an unusual transaction that had to receive the Delaware County Auditor's approval for filing the deed and an exemption from filing a second conveyance fee statement and payment of the transfer tax. The record before this Board also indicates that the BOE apparently had no knowledge of the transfer of the undivided one-half interest in the property and therefore did not provide that information at the time the complaint was filed. However, the County Recorder's records would have reflected the subsequent transfer.

Based upon the record before this Board, we conclude that the BOE's complaint was sufficient to establish jurisdiction with the BOR pursuant to R.C. 5715.19. The BOE's complaint correctly named one of the owners, the parcel number and property location, and the basis for the value sought. The BOE's complaint form substantially complied with the core jurisdictional requirements set forth in R.C. 5715.19. The BOE's omission of one of the owners of an undivided one-half interest in the property from the complaint form does not run to the core of procedural efficiency, and therefore, would not be an appropriate basis for

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property to a third party by way of quit-claim deed. Simply because the deed had not yet been recorded does not negate the ownership or prohibit the additional owner of the undivided one-half interest in the subject property from defending his or her interest in the property. See for example Gail Schultz v. Cuyahoga Cty. Bd. of Revision (April 3, 1998), B.T.A. Case No. 97-G-702, unreported, wherein this Board allowed the purchaser of a parcel of land to file a valuation complaint on a property although the complainant's deed to the property had not yet been filed, and the Auditor's records did not indicate that the complainant was the current property owner.

the BOR to dismiss the BOE's complaint. Cleveland Elec. Illum. Co., supra.

In so holding we find that this decision does not conflict with our findings in Trotwood-Madison City School Dist. v. Montgomery Cty. Bd. of Rev. (June 30, 1997), B.T.A. No. 95-S-1282, unreported, and Cincinnati School District Bd. of Education v. Hamilton Cty. Bd. of Revision (Dec. 18, 1998), B.T.A. Case No. 98-J-481, unreported. In those cases the complaint named a party not the owner of the property in question. In finding the complaints jurisdictionally defective we held that the naming of the owner of the subject property by the complainant is a core jurisdictional requirement for completing the complaint form. See also City of Cincinnati School District Board of Education v. Hamilton Cty. Bd. of Revision (January 22, 1999), B.T.A. Case No. 98-L-67, unreported.

The second issue to be resolved by this Board is whether the BOR properly dismissed the complaint because the property owners did not receive the required notice regarding the valuation complaint filed with the BOR against their property pursuant to R.C. 5715.19(B). As discussed above, the BOE listed the Rankeys as the owner of the property on the complaint form. The property owners assert that either the BOE, or the Auditor, or the BOR was required to list and/or give notice of the complaint to all of the property owners of the subject property at the time of the filing of the complaint. The property owners maintain that because Delaware Realty & Properties, Ltd. was not given written notice of the filing of the complaint or notice of the hearing, the BOR did

not have jurisdiction to hear the case. The property owners again assert that R.C. 5715.19(B) and the Supreme Court's recent decision in Kalmbach Wagner v. Wyandot Cty. Bd. of Revision, supra, support their position.

DTE Complaint Form No. 1 asks for information regarding the subject property including the name of the owner of the property at question number one. In Public Square Tower One v. Cuyahoga Cty. Bd. of Revision (1986), 34 Ohio App. 3d 49, the Eighth District Court of Appeals analyzed several potential interpretations of the word "owner" for purposes of R.C. 5715.19 and DTE Form No. 1. The court concluded as follows:

"Neither R.C. 5715.19 nor DTE Form No. 1 expressly refers to the owner on the tax lien date. Since the property incurs a continuing liability based on its valuation, the current owner has an obvious financial interest in its tax value. Therefore, the 'current owners' cannot mean that the former owners should be identified and notified in place of the current owners. \*\*\* \*\*

\*\*\* \*\* The most rational interpretation of the statute and the form governing complaints is that the 'owner' means the owner when the complaint is filed. See G & M Lorain Assoc. v. Cuyahoga Cty. Bd. of Revision (June 28, 1984), Franklin App. Nos. 83AP-1206, -1207 and 84AP-75, unreported."

This Board has consistently followed Public Square Tower One, supra, with respect to the issue of what owner is contemplated in R.C. 5715.19. See Atrium Marketing Services v. Hamilton Cty. Bd. of Revision (June 9, 1995), B.T.A. Case No. 94-S-1318C et.seq.,

unreported; Society National Bank v. Wood Cty. Bd. of Revision (April 25, 1997), B.T.A. Case No. 96-J-599, unreported; Timothy J. Walters v. Medina Cty. Board of Revision (Jan. 17, 1997), B.T.A. Case No. 96-B-285, unreported; GAC Acquisition Corp. v. Delaware Cty. Bd. of Revision (Feb. 13, 1998), B.T.A. Case No. 97-R-1177, unreported. On the date the BOE filed the complaint with the BOR, the BOE listed the Rankeys as the owner of the subject property. Pursuant to Public Square Tower One, supra, and the decisions following it, the BOE properly listed the Rankeys as an owner of the property. The listing of one of the property owners on the DTE Form No. 1 complaint form is sufficient pursuant to R.C. 5715.19.

The property owners further argue that because Delaware Realty & Properties, Ltd. did not get official notice pursuant to R.C. 5715.19 by either the BOE, the County Auditor or the BOR, that jurisdiction with the BOR was defective and the case was properly dismissed. As noted, the record clearly establishes that the BOE listed one of the property owners and their address in response to question number one on the complaint form. The BOE provided the location of the subject property and the parcel number. The complaint form also stated the amount and basis for the BOE's requested increase in value for the subject property.

R.C. 5715.19(B) requires the auditor, not the complainant, to give notice of each complaint filed in which the value in dispute is at least \$17,500 to each property owner whose property is the subject of the complaint if the complaint was not filed by the owner, and to each board of education whose school district may be affected. The type of notice required by the

county auditor is not prescribed in R.C. 5715.19(B). R.C. 5715.19(C) requires the boards of revision to notify the property owner if his address is known, of the time and date of the hearing on the particular complaint before the boards of revision. In addition, R.C. 5715.12 imposes a specific requirement that the BOR give notice to the property owner and an opportunity to be heard before increasing the value of any property. The notice can be served upon the owner of the property, or his agent, or by advertisement in accordance with R.C. 5715.12. The Board concludes that these statutes are procedural in nature and do not go to core jurisdiction. The failure to act by the Auditor or the BOR in accordance with the statute does not affect the ultimate jurisdiction of the BOR to consider the pending complaint.

The record before this Board does not reflect any notice to any owner by the Auditor of the filing of the BOE's complaint. Similarly, the record before this Board does not reflect any notice, written or otherwise, of the scheduling of the hearing of the complaint by the BOR. These two notices are required by R.C. 5715.19(B) and (C) respectively. It is incumbent upon the County Auditor and BOR to give the required notice of the filing of the complaint and setting of the hearing. The Delaware County BOR's subsequent dismissal of the BOE's complaint at the BOR hearing for the stated reason that "they have not received notice" was improper and unlawful. This was a procedural error by the BOR.

It is also observed that the record establishes that all the property owners did, in fact, have actual notice of the hearing because they were all represented by counsel at the scheduled

hearing before the BOR. Upon the motion of counsel for the property owners to the dismiss the appeal, the BOR could have continued the matter to allow for the Auditor and the BOR to formally provide notice of the hearing on the complaint to the property owners in accordance with the statutory requirements. In the alternative, the BOR could have obtained waivers of the statutory notice from the property owners and proceeded to have the valuation hearing. However the BOR's dismissal of the BOE's complaint for the failure of the Auditor or BOR to provide the statutory notice of the hearing was not appropriate.

Based upon the foregoing, it is the decision and order of the Board of Tax Appeals that the decision of the Delaware County Board of Revision dismissing Appellant's complaint was unlawful and unreasonable, and the same must be and hereby is, reversed. It is further ordered that this matter be remanded to the Delaware County Board of Revision to give notice of the filing of the complaint to all of the known property owners, to schedule and hold a hearing, to receive additional evidence if any as to the value of the subject property and to then make a determination as to the true value of the subject property in accordance with the BOR's statutorily imposed duties.

9/14 9/28

Appellee Brief  
due  
3/8/10  
reply 3/22

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

2200 CARNEGIE, LLC,

2010 FEB 8 10 08  
CASE NO. 09 702890

Appellant,

GERALD S. SUEB  
CLERK OF COURTS  
CUYAHOGA COUNTY  
JUDGE BRIDGET M. McCAFFERTY

-vs-

CUYAHOGA COUNTY BOARD OF  
REVISION, et al.,

BRIEF OF APPELLANT

Appellees.



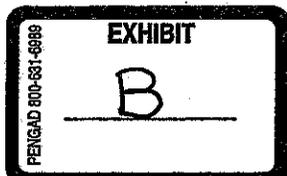
Now comes the Appellant, by and through undersigned counsel, and hereby submits its  
Brief of Appellant, attached hereto and incorporated herein by reference.

Respectfully Submitted,

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## BRIEF IN SUPPORT

### ***PROCEDURAL HISTORY/STATEMENT OF THE FACTS:***

On March 27, 2007, Appellee Board of Education of the Cleveland Metropolitan School District filed a Complaint Against the Valuation of Real Property against Appellant 2200 Carnegie, LLC relative to Parcel Numbers 103-16-029 and 103-16-030. The "requested change in value" was purported to be justified due to "recent sale". A copy of this Complaint is attached hereto, as part of the "Transcript on Appeal" which was filed in *2200 Carnegie, LLC v. Cuyahoga County Board of Revision, et al., Cuyahoga County Court of Common Pleas Case No. CV-07-641119* and which is being filed herewith.

Neither a copy of this Complaint, nor a notice of the filing of this Complaint was served upon Appellant<sup>1</sup>. In fact, the first notice that 2200 Carnegie, LLC received regarding the filing of this Complaint was a letter from the Cuyahoga County Board of Revisions dated July 27, 2007, but post marked August 14, 2007. The post mark on this letter established that the letter was not received by 2200 Carnegie, LLC until after August 14, 2007.

On August 30, 2007, 2200 Carnegie, LLC filed a motion to dismiss the Complaint with the Cuyahoga County Board of Revision, arguing that the complaint should be dismissed as the complainant failed to comply with notice requirements set forth in the Rules of Procedure of the Cuyahoga County Board of Revision and had therefore not acquired jurisdiction over the

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<sup>1</sup> A letter dated April 27, 2007, identified as Exhibit C in the Transcript on Appeal filed in case number CR 07 641119 (filed herewith) was addressed to "2200 Carnegie LLC, 2000 E. 9<sup>th</sup> Str. #700, Cleveland, Ohio 44114" even though the March 27, 2007 Complaint listed Appellant's then proper address, 3912 Prospect Avenue, Cleveland, Ohio 44115. Per Affidavit of Larry W. Zukerman, attached to Appellant's Motion to Dismiss the Complaint, Exhibit D, avers and establishes that this letter was never received by Appellant.



Appellant.

On that same date, a hearing was held before the Cuyahoga County Board of Revision Administrator Robert M. Chambers concerning the valuation of the property in question.

On October 11, 2007, Cuyahoga County Board of Revision Administrator Robert M. Chambers informed Appellant that the Board of Revision had decided to increase the value of the subject property by the amount of \$97,800.00 for tax year 2006.

On November 8, 2007, Appellant timely appealed this decision to this Court. This appeal was captioned *2200 Carnegie, LLC v. Cuyahoga County Board of Revision, et al., Cuyahoga County Court of Common Pleas Case No. CV-07-641119*.

On September 8, 2008, in *2200 Carnegie, LLC v. Cuyahoga County Board of Revision, et al., Cuyahoga County Court of Common Pleas Case No. CV-07-641119* this Court remanded the matter back to 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".

Thus, the ruling in said appeal was, in relevant part, that the Board of Revision had not obtained jurisdiction over 2200 Carnegie, LLC relative to the Complaint filed on March 27, 2007.

On September 25, 2008, the Cuyahoga County Board of Revision sent 2200 Carnegie, LLC a notice that the Board of Education filed a valuation complaint. Although this notice makes no reference to the filing date of the Complaint, the Board of Education did not file a new Complaint. Instead, the Board of Revision mailed a notice of the filing of the valuation complaint, almost eighteen (18) months after the filing of said Complaint. A copy of this letter is attached hereto.



On or about April 16, 2009, a hearing was held before the Board of Revision on Appellee Board of Education's March 27, 2007 Complaint.

Subsequently, on August 6, 2009, the Board of Revision issued its decision for tax year 2006, increasing the property tax as stated in the decision, which is the subject of the within matter.

This timely appeal was filed relative to this decision.

**LAW AND ARGUMENT:**

**ASSIGNMENT OF ERROR #1:**

*The Board of Revision 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 date such complaints may be filed" as mandated by ORC 5715.19(B), was not complied with.*

The September 25, 2008 written notice of the March 27, 2007 filing of the Complaint by the Board of Education in the within matter, as mandated by ORC 5715.19(B) was not timely made as it was not made within thirty (30) days "after the last date such complaints may be filed" and, accordingly, the Board of Revision did not have jurisdiction over Appellant to hear and rule on the March 27, 2007 Complaint. Accordingly, this Honorable Court must vacate the ruling of the Board of Revision which is the subject of the within appeal and must dismiss the March 27, 2007 Complaint.

ORC 5715.19 states, in relevant part:

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

(1) Subject to division (A)(2) of this section, a complaint against any of the following determinations for the



current tax year shall be filed with the county auditor on or before the thirty-first day of March of the ensuing tax year or the date of closing of the collection for the first half of real and public utility property taxes for the current tax year, whichever is later:

\* \* \*

(d) The determination of the total valuation of any parcel that appears on the agricultural land tax list, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code;

\* \* \*

(B) Within 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, 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. . . .

In *Gulf Oil Corp. v. Kosydar* (1975), 44 Ohio St. 2d 208, the Supreme Court of Ohio stated, in relevant part, in the first paragraph of the syllabus:

Strict construction of taxing statutes is required, and any doubt must be resolved in favor the citizen upon whom or the property upon which the burden is sought to be imposed.

This principle has been applied to ORC 5715.19 by the Supreme Court of Ohio. *See, Cincinnati School District Board of Education v. Hamilton County Board of Revision* (1996), 74 Ohio St. 3d 639.

Thus, as mandated by ORC 5715.19(B), which must be strictly construed against Appellees herein, the Board of Revision was mandated to notice of the March 27, 2007



Complaint filed by Appellee Board of Education to Appellant 2200 Carnegie, LLC, “[w]ithin thirty days after the last date such complaints may be filed”, or, in this case, within thirty days of March 31, 2007. It has already been determined that the Board of Revision failed to send this notice within that time period. *See, 2200 Carnegie, LLC v. Cuyahoga County Board of Revision, et al., Cuyahoga County Court of Common Pleas Case No. CV-07-641119, September 8, 2008 Journal Entry.*

This failure to send notice to 2200 Carnegie, LLC within thirty days of March 31, 2007 cannot be cured, as the mandates of ORC 5715.19(B) must be strictly construed against Appellees.

The notice required by ORC 5715.19(B) was not sent until September 25, 2008, almost eighteen months after the filing of the March 27, 2007 Complaint. Thus, the Board of Revision did not have jurisdiction to hear and rule on the March 27, 2007 Complaint.

The Supreme Court of Ohio addressed, and stressed, the importance of strict compliance with the mandates of ORC 5715.19 and how said compliance is necessary to confer jurisdiction to boards of revision in *Elkem Metals Company v. Washington County Board of Revision* (1998), 81 Ohio St. 3d 683:

*In Seventh Urban, Inc. v. Univ. Circle Prop. Dev., Inc.* (1981), 67 Ohio St. 2d 19, 22, 21 O.O. 3d 12, 14, 423 N.E. 2d 1070, 1073, we stated that jurisdiction is the authority to hear and determine a cause. *See, also, Sheldon's Lessee v. Newton* (1854), 3 Ohio St. 494; *State v. King* (1957), 166 Ohio St. 293, 2 O.O. 2d 200, 142 N.E. 2d 222. The jurisdiction for boards of revision is set forth in R.C. 5715.01 and 5715.11. R.C. 5715.01 provides, “There shall also be a board in each county, known as the county board of revision, which shall hear complaints and revise assessments of real property for taxation.” R.C. 5715.11 provides, “The county board of revision shall hear complaints relating to the valuation or assessment of real property \* \* \*. The board shall investigate all such complaints and may increase or decrease any such valuation \*



\* \* \*

A review of the applicable statutes set forth above shows that a board of revision has been given jurisdiction to hear and rule on complaints submitted to it. As part of its jurisdiction to hear and rule on complaints, a board of revision must undertake a two-step analysis. First, the board of revision must examine the complaint to determine whether it meets the jurisdictional requirements set forth by the statutes. Second, if the complaint meets the jurisdictional requirements, then the board of revision is empowered to proceed to consider the evidence and determine the true value of the property.

The statutory requirements for filing and filling out a complaint are contained in R.C. 5715.13 and 5715.19. In *Stanjim Co. v. Mahoning Cty. Bd. of Revision* (1974), 38 Ohio St. 2d 233, 235, 67 O.O. 2d 296, 298, 313 N.E. 2d 14, 16, we stated that "full compliance with R.C. 5715.19 and 5715.13 is necessary before a county board of revision is empowered to act on the merits of a claim." Thus, only after a board of revision determines that the complaint meets the jurisdictional requirements can it proceed to the second step to determine the case on the merits. If the complaint does not meet the jurisdictional requirements, then the board of revision must dismiss it because the complaint has not invoked the board's power to proceed to a consideration of the merits.

*See also, C.I.A. Properties v. Cuyahoga County Auditor* (2000), 89 Ohio St. 3d 363.

The Ohio Supreme Court has noted that, upon the filing of a complaint with a board of revision, the board of revision must comply with the requirements of ORC 5715.19. In *Sharon Village Limited v. Licking County Board of Revision* (1997), 78 Ohio St. 3d 479, the Supreme Court stated:

... the complaint is filed for the purpose of initiating an adversarial proceeding just as any other complaint does. A board of revision is required by R.C. 5715.19 to give proper notice to property owners and boards of education when a complaint is filed by other parties. Under R.C. 5715.11, the board of revision hears and investigates all complaints. A board of revision is also required to give adequate notice of hearing dates and times so that all parties may participate.



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*Id.*, at 481-482.

In *IBM Corporation v. Board of Revision of Franklin County*, 2006 Ohio 6258 (Franklin County, 2006), the Tenth District Court of Appeals held that the failure to file timely complaints constituted jurisdictional failures and, as such, the complaints must be dismissed. In so holding, the Court stated:

Complaints filed under R.C. 5715.19 and 5715.13 are jurisdictional. *Buckeye Foods v. Cuyahoga Cty. Bd. of Revision* (1997), 78 Ohio St. 3d 459, 461. As such, the Ohio Supreme Court has held that “full compliance with R.C. 5715.19 and 5715.13 is necessary before a county board of revision is empowered to act on the merits of a claim.” *Id.*, quoting *Stanjim Co. v. Mahoning Cty. Bd. of Revision* (1974), 38 Ohio St. 2d 233, 235. Further, under Ohio law, “[s]ubject matter jurisdiction is never waived, and neither a court nor the parties may confer jurisdiction where none existed originally.” *Hirt’s Greenhouse, Inc. v. City of Strongsville* (Sept. 7, 1995), Cuyahoga App. No. 68374. Thus, “the lack of jurisdiction can be raised at any time, even for the first time on appeal.” *State ex rel. Tubbs Jones v. Suster* (1998), 84 Ohio St. 3d 70, 75. See, also, *Hirt’s Greenhouse*, *supra* (“the filing of a cross appeal is not a prerequisite to challenging the subject matter jurisdiction of this court”).

Accordingly, as ORC 5715.19 must be strictly construed against Appellees, and as the Board of Revision failed to properly serve Appellant with notice of the filing of the March 27, 2007 Complaint within thirty days of March 31, 2007 as mandated by ORC 5715.19(B), the Board of Revision did not have jurisdiction to hear and rule on said Complaint.

For the foregoing reasons, as the Board of Revision did not have jurisdiction to hear and rule on the Complaint, this Court must vacate the decision of the Board of Revision and must remand this matter back to the Board of Revision with instructions to dismiss the March 27, 2007 Complaint for lack of jurisdiction.



ASSIGNMENT OF ERROR #2:

*Appellee Board of Revision has failed to certify to this Court a transcript of the record of proceedings of said board and, accordingly, has failed to comply with ORC 5717.05. As such, this Honorable Court must vacate the August 6, 2009 decision of the Board of Revision and remand this matter back to the Board of Revisions.*

Appellant hereby asserts, as set forth above, that the Board of Revision's failure to comply with timely notice requirements set forth in ORC 5717.19(B) constitutes a jurisdictional defect and, accordingly, this Court must vacate the Board of Revision's August 6, 2009 decision and remand this matter back to the Board of Revision to dismiss the March 27, 2007 Complaint. However, assuming *arguendo*, that this Court overrules the first assigned error herein, Appellant avers that the Board of Revision has failed to comply with ORC 5717.05 by not certifying to this Court a transcript of the record of proceedings of said board, and, as such, this Court should remand this matter back to the Board of Revision with instructions to properly certify a transcript of the record.

On August 31, 2009, Appellant filed its Notice of Appeal in the within matter, appealing the decision rendered by the Cuyahoga County Board of Revision for the tax year 2006 which was rendered on August 6, 2009.

ORC 5717.05 provides, in relevant part:

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



The Board of Revision has failed to certify to this Honorable Court "a transcript of the record of the proceedings of said board pertaining to the original complaint and all evidence offered in connection with that complaint".

"Pursuant to R.C. 5715.08, 5717.01 and 5717.05, the board of revision is required to make and keep a record on each complaint and to certify a transcript of the record of the proceedings and all evidence offered in connection with any complaint appealed to either the BTA or the common pleas court." *Sharon Village Limited, supra*, 78 Ohio St. 3d at 482.

Accordingly, as the Appellee Board of Revision has failed to comply with its statutory obligations to make and keep a record and to certify a transcript of the record of proceedings relative to the within matter, this Honorable Court must remand this matter back to the Board of Revision with instructions to comply with the law and certify the transcript of proceedings to this Honorable Court.

CONCLUSION:

Based on the foregoing, Appellant hereby respectfully prays that this Honorable Court sustain the First Assignment of Error herein and vacate the decision of the Board of Revision and remand this matter back to the Board of Revision with instructions to dismiss the Complaint. In the alternative, Appellant prays that this Honorable Court remand this matter back to the Board of Revision with instructions to certify a transcript of proceedings to this Court, as prayed for in Assignment of Error No. 1.

Respectfully Submitted,

  
S. MICHAEL LEAR, Esq.



ZUKERMAN,

DAIKER & LEAR CO., L.P.A.

Attorneys at Law

3912 PROSPECT AVE., EAST  
CLEVELAND, OHIO 44115

Telephone (216) 696-0900

Fax (216) 696-8800

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing has been sent by regular US Mail, postage prepaid, to:

JAMES H. HEWITT, III, Esq., Counsel for Appellee Board of Education of the Cleveland Municipal School District, at The Groh Mansion, 3043 Superior Avenue, Cleveland, Ohio 44114-4340, and to:

TIMOTHY J. KOLLIN, Esq., Assistant Prosecuting Attorney, The Justice Center-Courts Tower, 1200 Ontario Street, 8<sup>th</sup> Floor, Cleveland, Ohio 44113, Counsel for Appellee Cuyahoga County Board of Revision, and to:

FRANK RUSSO, Cuyahoga County Auditor, 1219 Ontario Street, Cleveland, Ohio 44113

this 8 day of February, 2010.

  
\_\_\_\_\_  
S. MICHAEL LEAR, Esq.



ZUKERMAN,  
DAIKER & LEAR CO., L.P.A.  
Attorneys at Law  
3912 PROSPECT AVE., EAST  
CLEVELAND, OHIO 44115  
Telephone (216) 696-0900  
Fax (216) 696-8800

**TRANSCRIPT ON APPEAL  
FROM COUNTY BOARD OF REVISION**

2200 Carnegie LLC

Name (Please Print)

3912 Prospect Ave Cleveland Ohio 44115

Address City State Zip

v. **Appellant.**

**AUDITOR AND THE BOARD OF REVISION**

of Cuyahoga County, Ohio

Cleveland Municipal School District BOE

(Names of other appellees, if any) **Appellee(s).**

**FILED**

2007 DEC 14 A 10 15

**BOR Case No.** 200704020246

**CCP Case No.** 641119

Larry W Zukerman, Esq.  
S Michael Lear  
Zukerman, Daiker & Lear Co., LPA  
3912 Prospect Ave  
Cleveland OH 44115

To the Court of Common Pleas:

The Board of Revision hereby certifies the transcript of the record of the proceedings before it pertaining to the original complaint in the captioned matter and all evidence offered in connection with that complaint.

1. The complaint (copy attached) was filed by Cleveland Municipal School District Board of Education
2. The counter-complaint(copy attached) if any, was filed by no counter
3. The property is listed in the name(s) of 2200 Carnegie LLC with a tax mailing address of 3912 Prospect Ave Cleveland OH 44114 and is located in the Cleveland taxing district.
4. The Board of Revision issued its decision on (date) October 11, 2007 and mailed the decision by certified mail to all parties as prescribed by ORC 5715.20 on (date) October 11, 2007.
5. The auditor and Board of Revision found the valuation and assessment for tax year 2006 to be as follows:

(If more than one parcel or manufactured or mobile home, attach sheet showing values for additional parcels using same format as below.)

**Parcel or Registration Number:**

PARCEL NUMBER:	103-16-029		
	AUDITOR	BOR	INCREASE (DECREASE)
<b>LAND</b>			
TRUE VALUE	53,800	53,800	No change
TAXABLE VALUE	18,800	18,800	No change
<b>BUILDING</b>			
TRUE VALUE	298,200	377,800	79,600 Bldg. Inc
TAXABLE VALUE	104,400	132,200	28,000 Bldg. Inc

5. A copy of the notice of appeal was received and filed on (date) November 8, 2007; and all parties have been notified of the appeal by certified mail.

A copy of the notice of appeal has not been received by the Board of Revision.

I certify that the foregoing statements are true and that the attached transcript is a true and complete record of the proceedings before the Board of Revision pertaining to the decision appealed from and all evidence offered and considered by the Board of Revision.

Frank Russo/Km

(Signature)  
Auditor of Cuyahoga County

December 11, 2007  
Date

# COMPLAINT AGAINST THE VALUATION OF REAL PROPERTY

ANSWER ALL QUESTIONS AND TYPE OR PRINT ALL INFORMATION

READ INSTRUCTIONS BEFORE COMPLETING FORM  
 ATTACH ADDITIONAL PAGES IF NECESSARY

DATE RECEIVED  
 03 27 P 2:22  
 CUYAHOGA COUNTY  
 BOARD OF REVENUE

TAX YEAR 2006  
 COUNTY Cuyahoga

ORIGINAL COMPLAINT  
 COUNTER-COMPLAINT

NOTICES WILL BE SENT ONLY TO THOSE NAMED BELOW

	NAME	Street Address, City State, Zip Code
1) Owner of Property	2200 Carnegie, LLC	3912 Prospect Ave., Cleveland, OH 44115; additional address: 2000 East 9 <sup>th</sup> St., Suite 700, Cleveland, OH 44114
2) Complainant if not owner	Board of Education of the Cleveland Municipal School District	1380 East Sixth Street; Cleveland, OH 44114
3) Complainant's Agent	James H. Hewitt, III (0012926)	James H. Hewitt Co., LPA, 3043 Superior Ave. Cleveland, OH 44114-4340

4) Telephone number of contact persons (216)241-5700

5) Complainant's relationship to property if not owner Taxing Authority

If more than one parcel is included, see "Multiple Parcels" on back.

6) Parcel number from tax bill	Address of property
103-16-029	3912 Prospect Ave.
103-16-030	Cleveland, OH

7) Principal use of property: commercial

8) The increase or decrease in taxable value sought. Counter-complaints supporting auditor's value may have zero in Column D.

Parcel Number	Complainant's Opinion of Value		Column C Current Taxable Value (From Tax Bill)	Column D Change in Taxable Value(+or-) (Col. B minus Col. C)
	Column A True Value (Fair Market Value)	Column B Taxable Value (35% of Column A)		
103-16-029	431,600	151,060	123,200	27,860
103-16-030	88,400	30,940	24,570	6,370
Total	520,000	182,000	147,770	+34,230

9) The requested change in value is justified for the following reasons:

recent sale

10) Was property sold in the last 3 years? Yes:  No:  Unknown: . If yes, show date of sale 10/16/06 and sale price \$520,000; and attach information explained in "Instructions for Questions 10" on back.

11) If property was not sold but was listed for sale in the last 3 years, attach a copy of listing agreement or other available evidence.

12) If any improvements were completed in the last 3 years, show date Unknown and total cost \$ Unknown

13) Do you intend to present the testimony or report of a professional appraiser? Yes:  No:  Unknown: .

14) If you have filed a prior complaint on this parcel since the last reappraisal or update of property values in the county, the reason for the valuation change requested must be one of those below. Please check all that apply and explain on attached sheet. See R.C. 5715.19(A)(2) for a complete explanation.

- The property was sold in an arm's length transaction;
- A substantial improvement was added to the property;
- The property lost value due to a casualty;
- Occupancy change of at least 15% had a substantial economic impact on the property

I declare under penalties of perjury that this complaint (including any attachments) has been examined by me and to the best of my knowledge and belief is true, correct and complete.

Date 3/23/07 Complainant or Agent James H. Hewitt, III (0012926) Signature \_\_\_\_\_ Title (If agent) Attorney and Agent

Sworn to and signed in my presence, this 23 day of March year 2007

**EXHIBIT**

MOYCE FONVILLE EASTER 44

Board of Revision Attachment

PARCEL #	CLASS	LAND VALUE	BUILDING	TOTAL
103-16-029	C	53,800	298,200	352,000
103-16-030	C	53,800	16,400	70,200

TOTAL: \$107,600 \$314,600 \$422,200



Tax Year: 2006  
 Case Number: 200704020426  
 Parcel Number: 103-16-029 et al.

Previous Filing Year: \_\_\_\_\_

8A: \_\_\_\_\_ 8B: \_\_\_\_\_

Comments: \_\_\_\_\_

8D: +97,800

See Attached List

	Land	Bldg.	Total
Certified			

C  
1  
0

COMPLAINT  
 WRITTEN  
 JW  
 D23.07

POSTED

REVIEW DATE

ORAL HEARING DATE

Journal page	Journal date
2209	10/11/07

Total Fair Market Value

Decision ~~103-16-030~~ 103-16-030

Decision

we ready + 18,200WV

⇒ 103-16-029  
 we ready + 79,600WV

L 53,800  
 B 377,800  
 T 431,600

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

L 53,800  
 B 34,600  
 T 88,400

(Hearing Officers)

(Hearing Officers)

By [Signature]  
 CUYAHOGA COUNTY BOARD OF REVISION

9

CUYAHOGA COUNTY RECORDER  
PATRICK J. O'MALLEY - 3  
DEED 10/16/2006 02:21:55 PM  
200610160923

RECEIVED

General Warranty Deed

2006 MAR 27 P 2:22

KNOW ALL MEN BY THESE PRESENTS, That 3912 Prospect Ave., Ltd., an Ohio Limited Liability Company of Cuyahoga County, Ohio for valuable consideration paid, Grant(s), with General Warranty Covenants to 2200 Carnegie-ELC, an Ohio Limited Liability Company, whose tax mailing address is 2000 East 9<sup>th</sup> Street, Suite 700, Cleveland, Ohio 44115, the following described Real Property:

See attached Exhibit A Legal Description

Permanent Parcel No. 103-16-029 & 103-16-030 / 3912 Prospect Ave., Cleveland, OH 44115

Prior Instrument Reference: Volume 96-09904 Page 6 of the Deed Records Cuyahoga County

Subject to restrictions of record, reservations, easements, rights of way and conditions of record, zoning ordinances, if any, and taxes and assessments, both general and special, for the current half of the taxable year and thereafter.

Executed by us this 13<sup>th</sup> day of October 2006.

Signed and Acknowledged:

3912 Prospect Ave., Ltd.

BY: [Signature] member

STATE OF Ohio

COUNTY OF Cuyahoga

Before me, a Notary Public in and for said County and State personally appeared before me the above named 3912 Prospect Ave., Ltd. an Ohio Limited Liability Company By: MICHAEL SINGER, its MEMBER who acknowledged that he did sign the foregoing instrument and the same is the free act and deed of said Company and of him personally and as such member

In testimony whereof I have set my hand and official seal at Cleveland, Ohio, this 13<sup>th</sup> day of October 2006.

[Signature]  
Notary Public

JACQUELINE K. FERNKORN  
Notary Public, State of Ohio  
Recorded in Cuyahoga Cty.  
My Commission Expires 02-02-10

My Commission Expires:

This Instrument Prepared By:  
William T. Boukalik, Attorney at Law

EXHIBIT

B

2157760  
2459779

## Exhibit A

### ADDRESS

3912 Prospect Avenue  
Cleveland, Ohio 44115  
Permanent Parcel No.(s) 103-16-029 & 103-16-030  
Order No 245979

### LEGAL DESCRIPTION

#### PARCEL NO. 1:

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio: and known as being that part of Original Ten Acre Lot No. 68 and bounded and described as follows:

Beginning in the Southerly line of Prospect Avenue, S.E. (82.5 feet wide), at a point distant 250 feet Westerly, (measured along said Southerly line) from its point of intersection with the Westerly line of East 40th Street (99 feet wide) said point being also the Northwesterly corner of land conveyed to Ellen I. Dascomb by deed dated March 19, 1868 and recorded in Volume 156, Page 16 of Cuyahoga County Records;

Thence Southerly along the Westerly line of land so conveyed to Ellen I. Dascomb as aforesaid, 215 feet 5 inches to the Northeasterly corner of a parcel of land conveyed to Charles B. Parker and Joseph F. Hobson by deed dated May 3, 1909 and recorded in Volume 1103, Page 557 of Cuyahoga County Records;

Thence Westerly along the Northerly line of land conveyed to Charles B. Parker and Joseph F. Hobson as aforesaid and parallel with the Southerly line of Prospect Avenue S.E., 50 feet to the Easterly line of land conveyed to Josephine Wackerman by deed dated September 4, 1866 and recorded in Volume 143, Page 178 of Cuyahoga County Records;

Thence Northerly along the Easterly line of land so conveyed to Josephine Wackerman as aforesaid, 215 feet 5 inches to the Southerly line of Prospect Avenue, S.E.;

Thence Easterly along said Southerly line of Prospect Avenue S.E., 50 feet to the place of beginning, be the same more or less, but subject to all legal highways.

#### PARCEL NO. 2:

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio: and known as being part of Original Ten Acre Lot No. 68 bounded and described as follows:

Beginning on the Southerly line of Prospect Avenue, S.E., 82½ feet wide at a point which is distant 300 feet Westerly, measured along said Southerly line, from its intersection with the Westerly line of East 40th Street (formerly Case Avenue) 99 feet wide;

Thence Westerly along the Southerly line of Prospect Avenue S.E., 50 feet to a point;

Thence Southerly at right angles to the Southerly line of Prospect Avenue, S.E., 215 feet 5

inches to a point;

Thence Easterly and parallel with the Southerly line of Prospect Avenue, S.E., 50 feet to a point;

Thence Northerly in a direct line 215 feet 5 inches to a place of beginning, be the same more or less, but subject to all legal highways.

ROBERT KLAIBER P.E., P.S.  
Legal Description complies with  
Cuyahoga County Conveyance  
Standards and is approved for  
transfer:

OCT 16 2006

  
Agent

Permanent 103-16-029  
Parcel #. 103-16-030

Type Instrument: Warranty Deed  
Tax District #: 3100  
Grantor: 3912 Prospect Ave Ltd  
Grantee: 3912 Prospect Ave Ltd  
Balance Assumed: \$ 0.00  
Total Consideration: \$ 520,000.00  
Conv. Fee Paid: \$ 2,080.00  
Transfer Fee Paid: \$ 1.00  
Fee Paid by: US TITLE  
Exempt Code

Date 10/16/2006 2:15:00 PM  
Tax List Year: 2006  
Land Use Code: 4420  
Land Value: 34,900  
Building Value: 312,300  
Total Value: 347,200  
Arms Length Sale: YES  
Rcpt. B-10162006-10  
Inst # 250073  
Check #:

*Frank Russo*  
CUYAHOGA COUNTY AUDITOR

# Cuyahoga County Board of Revision

County Administration Building Room 232  
1219 Ontario Street Cleveland, Ohio 44113

(216) 443-7195 / Ohio Relay Service 711

Fax: (216) 443-8282

Email: 2004resbor@cuyahogacounty.us

COMMISSIONER  
Timothy F. Hagan

AUDITOR  
Frank Russo

TREASURER  
James Rokakis

April 27, 2007

2200 Carnegie LLC  
2000 E. 9th St. #700  
Cleveland, OH 44114

RE: Parcel No. 103-16-029

Dear Taxpayer:

In compliance with Section 5715.19 and 5717.01 of the Ohio Revised Code, I am writing to inform you that the Board of Education respective to the location of the above-captioned property, has filed a valuation complaint requesting an increase in the assessed value of \$17,500 or more, with the Board of Revision (BOR).

This law provides the property owner an opportunity to file a counter-complaint with the BOR, within 30 days after receiving this notice. A copy of the complaint filed by the Board of Education is enclosed. A complaint form with instructions is also enclosed if you choose to file a counter-complaint.

If you have any questions or need assistance in filing, please call the Board of Revision at (216) 443-7195.

Respectfully,



Robert M. Chambers, Administrator  
Cuyahoga County Board of Revision

RMC:bor  
Enclosures  
CERTIFIED MAIL

**EXHIBIT** C

IN THE BOARD OF REVISION  
CUYAHOGA COUNTY, OHIO

2007 AUG 30 A 9 43

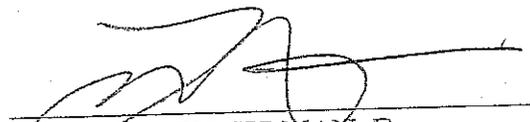
IN RE:	2200 CARNEGIE, LLC	:	PARCEL NOS.:	103-16-029
		:		103-16-030
		:	COMPLAINT #:	200704020426
		:		
		:	MOTION TO DISMISS COMPLAINT	

Now comes 2200 Carnegie, LLC, the property owner herein, by and through undersigned counsel, and hereby moves the Board of Revision of Cuyahoga County, Ohio to dismiss the Complaint Against the Valuation of Real Property filed by the Board of Education of the Cleveland Municipal School District for the reasons more fully set forth in the attached Brief in Support.

2200 Carnegie, LLC avers herein that this Board of Revision has failed to acquire jurisdiction over the property owner, 2200 Carnegie, LLC.

Further, 2200 Carnegie, LLC hereby moves this Board of Revision to exclude any and all documents which complainant, Board of Education of the Cleveland Municipal School District may seek to offer into evidence in the within matter because complainant has failed to comply with Board R. VI, by not serving upon the property owner any documents that complainant intends to offer into evidence in the within matter.

Respectfully Submitted,

  
 LARRY W. ZUKERMAN, Esq.  
 (#0029498)

**EXHIBIT**

D



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 DAIKER & LEAR CO., L.P.A.  
 Attorneys at Law  
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S. MICHAEL LEAR, Esq.  
(#0041544)  
ZUKERMAN, DAIKER & LEAR CO., L.P.A.  
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## BRIEF IN SUPPORT

### FACTS:

On March 27, 2007, Complainant Board of Education of the Cleveland Municipal School District filed its Complaint Against the Valuation of Real Property against 2200 Carnegie, LLC, the property owner, in the within matter.

Said Complaint was never served upon 2200 Carnegie, LLC. In fact, the first notice that 2200 Carnegie, LLC received regarding this matter is a letter from the Cuyahoga County Board of Revision, dated July 27, 2007, but post marked August 14, 2007. As evidenced by the post mark, this letter was not received by the property owner, 2200 Carnegie, LLC, until after August 14, 2007. A copy of this letter, as well as a copy of the postmarked envelope, are attached hereto.

### LAW AND ARGUMENT:

The Board of Revision must dismiss the Complaint filed by the complainant, Board of Education of the Cleveland Municipal School District as the notice requirements set forth in ORC Chapter 5715. and the notice requirements set forth in the Rules of Procedure of the Cuyahoga County Board of Revision have not been met in this matter. Accordingly, the Board of Revision has not acquired jurisdiction over the property owner, 2200 Carnegie, LLC in this matter.

ORC 5715.19(B) states, in relevant part:

(B) Within 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, 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 . . . Within thirty days after receiving such notice . . . a property owner . . . may file a complaint in support of or



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objecting to the amount of alleged . . . undervaluation . . . stated in a previously filed complaint or objecting to the current valuation.

ORC 5715.12 further provides, in relevant part, that: “[t]he county board of revision shall not increase any valuation without giving notice to the person in whose name the property affected thereby is listed and affording him an opportunity to be heard”.

Board R. II, of the Cuyahoga County Board of Revision states, in relevant part:

(B) If the stated amount of . . . under valuation . . . is at least seventeen thousand five hundred dollars (\$17,500.00) assessed valuation, the Administrator shall give notice by certified mail to each property owner whose property is the subject of the complaint (unless the complaint was filed by the property owner or the owner’s spouse) and to each board of education whose school district may be affected by the complaint. Such notice must be given within thirty (30) days (“Day” for purposes of these rules shall mean calendar day unless stated otherwise.) after the last date for the filing of complaints.

(C) All counter-complaints shall be filed within thirty (30) days after receipt of notice from the Board of Revision that a complaint has been filed.

Board R. IV

(A) The Administrator shall notify all parties to the proceedings and property owners by certified mail sixty (60) days prior to the date of hearing, when possible, but under no circumstances less than ten (10) days prior to the hearing.

Clearly, these statutory notice provisions and local rules were enacted to protect a property owner’s state and federal constitutional rights to Due Process of Law.

In Cincinnati School District Board of Education v. Hamilton County Board of Revision, 87 Ohio St. 3d 363, 721 N.E. 2d 40 (2000), the Ohio Supreme Court held, in relevant part, that the Hamilton County Board of Revision did not acquire jurisdiction over the property owner because the notices required by Chapter 5715 of the Revised Code were not given. In so holding,



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the Ohio Supreme Court state, in relevant part:

R.C. 5715.19(B) provides that when a complaint is filed by someone other than the owner and the amount of the stated undervaluation is at least \$17,500.00 the auditor is to give notice of the complaint to the property owner. R.C. 5715.19(B) further provides that within thirty days after receiving the notice the property owner may file a complaint objecting to the claim of undervaluation and be made a party to the action. R.C. 2715.19(C) also provides that the board of revision shall notify the property owner at least ten days prior to a hearing of its time and place. In addition to the notice requirements of R.C. 5715.19, R.C. 5715.12 provides that the board of revision shall not increase any valuation without giving notice to the person in whose name the property affected is listed and affording him or her the opportunity to be heard.

In this case, none of the required notices listed above was given to Candlewood in a timely fashion either before the hearing on July 2, 1997, or the decision of August 18, 1997.

\* \* \*

The consequences of not giving notice to an indispensable party, like the actual owner, were set forth in *Lincoln Tavern, Inc. v. Snader* (1956), 165 Ohio St. 61, 59 O. O. 74, 75-76, 133 N.E. 2d 606, 610, where we stated, "It is axiomatic that for a court to acquire jurisdiction there must be a proper service of summons or an entry of appearance, and a judgment rendered without proper service or entry of appearance is a nullity and void." Without the required notices being given to Candlewood, the BOR acquired no jurisdiction.

Id.

In the within matter, although 2200 Carnegie, LLC did receive notice of the hearing, 2200 Carnegie, LLC never received notice of the filing of the Complaint, depriving 2200 Carnegie, LLC of the opportunity to file a counter-complaint and effectively depriving 2200 Carnegie, LLC of due process of law by effectively denying 2200 Carnegie, LLC of an opportunity to challenge the Complaint in the within matter.

Accordingly, as the property owner in the within matter, 2200 Carnegie, LLC, was not



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DAITER & LEAR CO., L.P.A.

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CLEVELAND, OHIO 44115

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served with notice of the filing of the Complaint in the within matter, in violation of ORC 5715.19(B), ORC 5715.12, and Board R. II, this Board of Revision has not acquired jurisdiction over 2200 Carnegie, LLC in the within matter the Complaint herein must be dismissed. Further, the failure of notice in the within matter has amounted to a violation of 2200 Carnegie, LLC's state and federal constitutional rights to due process of law.

**II. COMPLAINANT HAS FAILED TO COMPLY WITH BOARD R. VI, AND THUS SHOULD BE PROHIBITED FROM OFFERING ANY DOCUMENTS IN SUPPORT OF ITS COMPLAINT IN THE WITHIN MATTER.**

Further, the complainant in the within matter failed to comply with Board R. VI, in its entirety, as the complainant has failed to serve upon 2200 Carnegie, LLC copies of the documents that the complainant intends to use in the within matter.

Board R. IV, entitled "PRE-HEARING DOCUMENT SUBMISSION PROCEDURE" states:

(A) A party seeking to change the Auditor's valuation must file the documents it intends to submit into evidence at the hearing, no later than five (5) days prior to the hearing.

(B) Rebuttal documents may be filed with the Board of Revision less than five days prior to the hearing, and including the day of the hearing.

(C) Three copies of all such documents shall be filed with the Board of Revision.

(D) Copies of all documents filed with the Board of Revision shall be served upon all other parties to the proceeding at the same time they are filed with the Board of Revision.

2200 Carnegie, LLC has not received service of any documents from complainant in the within matter. Per Board R. VI(D), any copies filed by complainant were to be served upon "all other parties to the proceeding at the same time they are filed with the Board of Revision". As a



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CLEVELAND, OHIO 44115

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consequence of not receiving any documents from complainant, 2200 Carnegie, LLC has not prepared any rebuttal documents. Thus, the complainant herein must be prohibited from offering into evidence any documents in support of the Complaint herein.

As there can be no evidence offered by complainant herein in support of its Complaint in the within matter, and as the burden of proof rests with the "party seeking a . . . increase in the Auditor's valuation", i.e., the complainant herein, pursuant to Board R. VII(J), the Complaint herein must be dismissed.

WHEREFORE, property owner 2200 Carnegie, LLC hereby moves this Board of Revision for an Order dismissing the Complaint in the within matter for the reasons more fully set forth herein.

Respectfully Submitted,



---

LARRY W. ZUKERMAN, Esq.  
S. MICHAEL LEAR, Esq.



ZUKERMAN,  
DAIKER & LEAR CO., L.P.A.

Attorneys at Law  
3912 PROSPECT AVE., EAST  
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of foregoing has been hand delivered to: JAMES H. HEWITT, III, Counsel for Board of Education of the Cleveland Municipal School District this ~~29<sup>th</sup>~~<sup>30<sup>th</sup></sup> day of August, 2007.

  
\_\_\_\_\_  
LARRY W. ZUKERMAN, Esq.  
S. MICHAEL LEAR, Esq.



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DAIKER & LEAR CO., L.P.A.

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STATE OF OHIO )  
 )  
CUYAHOGA COUNTY )

ss.

AFFIDAVIT

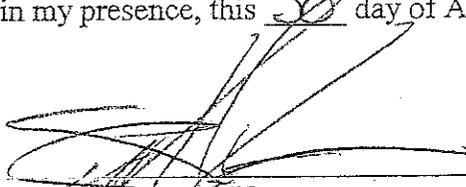
LARRY W. ZUKERMAN, Esq., being first duly cautioned pursuant to law, hereby deposes and states:

1. I am a principle of 2200 Carnegie, LLC;
2. 2200 Carnegie, LLC is the owner of the property located at 3912 Prospect Avenue, Cleveland, Ohio 44115, referred to as PPN 103-16-029; 1-3-16-030;
3. The first notice that I received, or anyone else on behalf of 2200 Carnegie LLC to my knowledge, relating in any way to the Complaint filed by complainant Board of Education of the Cleveland Municipal School District was a letter which was dated July 27, 2007, but which was not received until after August 14, 2007;
4. This letter, and envelope, have been copied and true and accurate copies of the originals have been attached hereto;
5. The Complaint in the within matter was not enclosed in this mailing;
6. Neither I, nor anyone else on behalf of 2200 Carnegie LLC to my knowledge, received a notice of filing of the Complaint in the within matter within 30 days of March 31, 2007;
7. Neither I, nor anyone else on behalf of 2200 Carnegie LLC to my knowledge, have received any documents that are intended to be introduced as evidence in the within matter from the complainant herein, Board of Education of the Cleveland Municipal School District.

FURTHER AFFIANT SAYETH NAUGHT.

  
LARRY W. ZUKERMAN, Esq.

SWORN TO BEFORE ME, and subscribed in my presence, this 30 day of August, 2007 by LARRY W. ZUKERMAN, Esq.

  
NOTARY PUBLIC

SCOTT MICHAEL LEAR, ATTORNEY AT LAW  
NOTARY PUBLIC, State of Ohio  
My Commission has no Expiration Date  
Section 147.03 R.C.

# Cuyahoga County Board of Revision

County Administration Building Room 232  
1219 Ontario Street Cleveland, Ohio 44113

(216) 443-7195 / Ohio Relay Service 711

Fax: (216) 443-8282

Email: 2004resbor@cuyahogacounty.us

COMMISSIONER

Timothy F. Hagan

AUDITOR

Frank Russo

TREASURER

James Rokakis

July 27, 2007

2200 Carnegie LLC  
2000 E. 9th St. #700  
Cleveland, OH 44114

Re: Parcel No. 103-16-029  
Complaint No. 200704020426

*SM -  
All see  
me*



To Whom It May Concern:

You are hereby informed that the complaint against the valuation filed by the Board of Education respective to the location of the above-captioned property, is set for hearing on Thursday, August 30, 2007 at 9:45 AM, with Hearing Board "B", in Room 232 of the Cuyahoga County Administration Building.

Pursuant to practice procedures adopted by the Board of Revision, three (3) copies of all documents, records and other evidence, shall be submitted to the Board at least 5 days prior to the hearing. Please label all information submitted with the parcel number, Hearing Board and the date of the hearing.

If you have any questions, please call the Board of Revision at (216) 443-7195.

Respectfully,

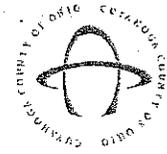
*Frank Russo*

Frank Russo  
Cuyahoga County Auditor  
secretary, Board of Revision

FR/ nab  
CERTIFIED MAIL

*Certified mail  
postmarked  
8/14/07*

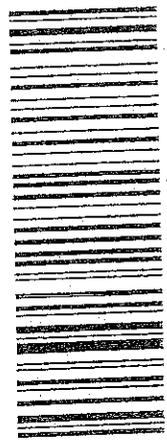
*2 week  
notice*



BOARD OF REVISION  
1219 Ontario Street, Room 232  
Cleveland, Ohio 44113-1686

420059

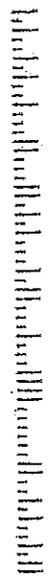
**CERTIFIED MAIL**



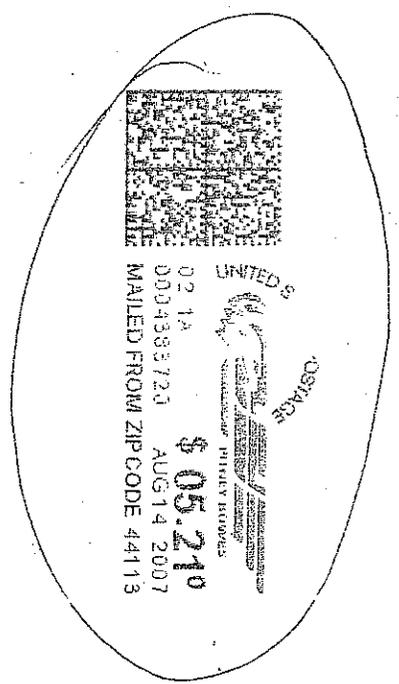
7007 0710 0005 0164 4996

2200 Carnegie LLC  
3912 Prospect Avenue  
Cleveland, OH 44115

441152710 0005



2



PARCEL ID: 2007 103-16-029

LAST UPDATED : 11/27/2006

\*\*\*\* PARCEL

Owner	2200 CARNEGIE, LLC	Validity	YNV - YES (NOT VERIFIED)	Owner Occ	
Address #	03912	Source of Inf	M - MVP DATABASE	Image Name	
Unit #		Multiple Parc	Y - YES	Data Collecto	CDM - C MARTIN
Street Direct		X Coord	87996	Deed Type	WAR - WARRANTY
Street	PROSPECT	Y Coord	85853	Grantee	2200 CARNEGIE, LLC
Street Suffix	AVE	Number of Uni	0	Grantor	3912 Prospect Ave Ltd
City	CLEVELAND	Unit Type		Inspection Da	
Zip Code	44115	Total Use Are	6990	Precinct	
Property Clas	C - COMMERCIAL	Mineral Right	N - NO	S.P. per Unit	
Sublot		Tax Abatement		Verification	11/21/2006
Taxing Distri	030 - CLEVELAND-E/R	Forest Land	N - NO	Verifier	IMP - BTCH IMPRPTD FRM M
Neighborhood	25081	Total Building	1	Zoning Code	BOR
Economic Unit		Road Type	PV - PAVED	Zoning Use	
Tax LUC	4420 - MED CLINIC/ OFFIC	Water	MUN - MUNICIPAL	Adj Sale Pric	
Condo Indicat	A - INVALID CODE	Sewer	SNS - SANITARY & STORM	Ext LUC	
Condo Complex		Gas	Y - YES	Abt LUC	
Total Assoc		Electricity	Y - YES	TIF LUC	
Sale Price	520000	Parcel Lot Si	10750		
Sale Date	10/16/2006	Prop Lot Size	21500		

\*\*\*\* ASSOC\_PARCELS # 1

Parcel ID 10316030

\*\*\*\* NOTES # 1

Update ID		Note Date	
Table Ref	PAR - PARCEL	Note Type	N - GENERAL NOTE

Notes 1991 VALUE REVISED BY BOR 01-15-93..RENOV & FNC COMP 1/1/93. ALT COMP 1/1/97#104485

NOTES # 2

Update ID		Note Date	
Table Ref	INS - INCOME_SUMMARY	Note Type	N - GENERAL NOTE

Notes SIGMA - VAS1

\*\*\*\* VALUATION

LAST UPDATED : 11/27/2006

Value System		Adjust Sale 1		Cap Value	
Value Date		Comp ID 2		Tot GRM Inc	
Tax Lnd Valu	53800	Adjust Sale 2		Adj Bldg	
Building	298200	Comp ID 3		Adj Land	
Tax Tot Valu	352000	Adjust Sale 3		Adj Total	
Ext Land	0	Comp ID 4		Bldg Adj Fact	
Ext Bldg	0	Adjust Sale 4		Comp Override	
Ext Total	0	Comp ID 5		Recalc Date	
Appraiser ID	VAS10	Adjust Sale 5		Ind EGIM Valu	
Apprais Date	07/05/2006	Added Land Va		Indicated Val	
Cost Land		Added Bldg Va		Adj Date	
RCN		Income Total		Land Adj Fact	
RCNLD		Income Date		MRA Date	
Det RCNLD		Cap Rate		Total Adj Fac	
Cost Total		EGIM		Unit Type	
Cost Date		Est.Eff. Gros		Units	
Mkt Adj Bldg		Est. Nat. Gro		Cert Total	352000
Adj Cost		Sel Lnd Valu		Cert Bldg	298200
Est Land		Bldg		Cert Land	53800
Est Bldg		Sel Tot Valu		Cert Year	2006
Est Total		Exm Land		Cert Flag	C
Med Comp		Exm Bldg		Alert Flag	

I hereby certify this to be a true copy of the original record on file in the office of an in custody of the County Auditor.

Frank Russo  
County Auditor

Dated 12.7.07 By Sandy Mullins  
Deputy Auditor

PARCEL ID: 2007 103-16-029 (Continued)

Med Comp Date  
Comp ID 1

Exm total  
Value Method

Alter Flag

\*\*\*\* VAL\_ADMIN

LAST UPDATED : 11/27/2006

Tax LUC 4420 - MED CLINIC/ OFFIC  
Tax Total 352000  
Tax Bldg 298200  
Taxable 53800  
Ext LUC  
Ext Total  
Ext Bldg  
Exempt

Abt LUC  
Abt Total  
Abt Bldg  
Abated  
TIF LUC  
TIF Total  
TIF Bldg  
TIF

Certified Yea 2006  
Certified Cla C  
Certified Tot 352000  
Certified Bld 298200  
Certified Lan 53800  
Appraiser ID VAS10  
Appraisal Dat 07/05/2006

\*\*\*\* VALUE\_HISTORY # 1993

LAST UPDATED :

Tax Year 12/23/1993  
Dup Tax LUC  
Tax Land 32300  
Tax Bldg 268200  
Tax Total 300500  
Dup Ext LUC  
Ext Land  
Ext Bldg  
Ext Total  
Cert Class

Cert Total  
Cert Bld  
Cert Lnd  
Cert Tax LUC  
Cert Tax Tota  
Cert Tax Bld  
Cert Tax Lnd  
Cert Ext LUC  
Cert Ext Tota  
Cert Ext Bld

Cert Ext Lnd  
Cert Abt LUC  
Cert Abt Tota  
Cert Abt Bld  
Cert Abt Lnd  
Cert TIF LUC  
Cert TIF Tota  
Cert TIF Bld  
Cert TIF Lnd

\*\*\*\* VALUE\_HISTORY # 1994

LAST UPDATED :

Tax Year 12/27/1994  
Dup Tax LUC  
Tax Land 32300  
Tax Bldg 439200  
Tax Total 471500  
Dup Ext LUC  
Ext Land  
Ext Bldg  
Ext Total  
Cert Class

Cert Total  
Cert Bld  
Cert Lnd  
Cert Tax LUC  
Cert Tax Tota  
Cert Tax Bld  
Cert Tax Lnd  
Cert Ext LUC  
Cert Ext Tota  
Cert Ext Bld

Cert Ext Lnd  
Cert Abt LUC  
Cert Abt Tota  
Cert Abt Bld  
Cert Abt Lnd  
Cert TIF LUC  
Cert TIF Tota  
Cert TIF Bld  
Cert TIF Lnd

\*\*\*\* VALUE\_HISTORY # 1995

LAST UPDATED :

Tax Year 12/29/1995  
Dup Tax LUC  
Tax Land 32300  
Tax Bldg 439200  
Tax Total 471500  
Dup Ext LUC  
Ext Land  
Ext Bldg  
Ext Total  
Cert Class

Cert Total  
Cert Bld  
Cert Lnd  
Cert Tax LUC  
Cert Tax Tota  
Cert Tax Bld  
Cert Tax Lnd  
Cert Ext LUC  
Cert Ext Tota  
Cert Ext Bld

Cert Ext Lnd  
Cert Abt LUC  
Cert Abt Tota  
Cert Abt Bld  
Cert Abt Lnd  
Cert TIF LUC  
Cert TIF Tota  
Cert TIF Bld  
Cert TIF Lnd

PARCEL ID: 2007 103-16-029 (Continued)

\*\*\*\* VALUE\_HISTORY # 1996

LAST UPDATED : 01/01/1996

Tax Year	01/01/1996	Cert Total	471500	Cert Ext Lnd
Dup Tax LUC	4000	Cert Bld	439200	Cert Abt LUC
Tax Land	32300	Cert Lnd	32300	Cert Abt Tota
Tax Bldg	439200	Cert Tax LUC	4000	Cert Abt Bld
Tax Total	471500	Cert Tax Tota	471500	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	439200	Cert TIF LUC
Ext Land		Cert Tax Lnd	32300	Cert TIF Tota
Ext Bldg		Cert Ext LUC		Cert TIF Bld
Ext Total		Cert Ext Tota		Cert TIF Lnd
Cert Class	C	Cert Ext Bld		

\*\*\*\* VAL\_HIST\_ADJ # 1996/ 1

Tax LUC	4000 - COMMERCIAL VAC LA	Ext Lnd	
Taxable Adj L	32300	Abt LUC	
Taxable Adj B	265100	Abt Total	
Taxable Adj T	297400	Abt Bld	
Exempt Adj Bl		Abt Lnd	
Exempt Adj La		TIF LUC	
Exempt Adj To		TIF Total	
Adjust Reason	120 - REAPPSL_ANNUAL_EQ	TIF Bld	
Rev Src ID	AUCNVRT	TIF Lnd	
Ext LUC		Beg Tax Year	1996
Ext Total		End Tax Year	1996
Ext Bld		Val Adj Recid	

\*\*\*\* VALUE\_HISTORY # 1997

LAST UPDATED : 01/01/1997

Tax Year	01/01/1997	Cert Total	305800	Cert Ext Lnd
Dup Tax LUC	4000	Cert Bld	272600	Cert Abt LUC
Tax Land	33200	Cert Lnd	33200	Cert Abt Tota
Tax Bldg	272600	Cert Tax LUC	4000	Cert Abt Bld
Tax Total	305800	Cert Tax Tota	305800	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	272600	Cert TIF LUC
Ext Land		Cert Tax Lnd	33200	Cert TIF Tota
Ext Bldg		Cert Ext LUC		Cert TIF Bld
Ext Total		Cert Ext Tota		Cert TIF Lnd
Cert Class	C	Cert Ext Bld		

\*\*\*\* VALUE\_HISTORY # 1998

LAST UPDATED : 01/01/1998

Tax Year	01/01/1998	Cert Total	305800	Cert Ext Lnd
Dup Tax LUC	4000	Cert Bld	272600	Cert Abt LUC
Tax Land	33200	Cert Lnd	33200	Cert Abt Tota
Tax Bldg	272600	Cert Tax LUC	4000	Cert Abt Bld
Tax Total	305800	Cert Tax Tota	305800	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	272600	Cert TIF LUC
Ext Land		Cert Tax Lnd	33200	Cert TIF Tota
Ext Bldg		Cert Ext LUC		Cert TIF Bld
Ext Total		Cert Ext Tota		Cert TIF Lnd
Cert Class	C	Cert Ext Bld		

PARCEL ID: 2007 103-16-029 (Continued)

\*\*\*\* VALUE\_HISTORY # 1999

LAST UPDATED : 01/01/1999

Tax Year	01/01/1999	Cert Total	305800	Cert Ext Lnd
Dup Tax LUC	4000	Cert Bld	272600	Cert Abt LUC
Tax Land	33200	Cert Lnd	33200	Cert Abt Tota
Tax Bldg	272600	Cert Tax LUC	4000	Cert Abt Bld
Tax Total	305800	Cert Tax Tota	305800	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	272600	Cert TIF LUC
Ext Land		Cert Tax Lnd	33200	Cert TIF Tota
Ext Bldg		Cert Ext LUC		Cert TIF Bld
Ext Total		Cert Ext Tota		Cert TIF Lnd
Cert Class	C	Cert Ext Bld		

\*\*\*\* VALUE\_HISTORY # 2000

LAST UPDATED : 01/01/2000

Tax Year	01/01/2000	Cert Total	321800	Cert Ext Lnd
Dup Tax LUC	4000	Cert Bld	289500	Cert Abt LUC
Tax Land	32300	Cert Lnd	32300	Cert Abt Tota
Tax Bldg	289500	Cert Tax LUC	4000	Cert Abt Bld
Tax Total	321800	Cert Tax Tota	321800	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	289500	Cert TIF LUC
Ext Land		Cert Tax Lnd	32300	Cert TIF Tota
Ext Bldg		Cert Ext LUC		Cert TIF Bld
Ext Total		Cert Ext Tota		Cert TIF Lnd
Cert Class	C	Cert Ext Bld		

\*\*\*\* VALUE\_HISTORY # 2001

LAST UPDATED : 01/01/2001

Tax Year	01/01/2001	Cert Total	321800	Cert Ext Lnd
Dup Tax LUC	4000	Cert Bld	289500	Cert Abt LUC
Tax Land	32300	Cert Lnd	32300	Cert Abt Tota
Tax Bldg	289500	Cert Tax LUC	4000	Cert Abt Bld
Tax Total	321800	Cert Tax Tota	321800	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	289500	Cert TIF LUC
Ext Land		Cert Tax Lnd	32300	Cert TIF Tota
Ext Bldg		Cert Ext LUC		Cert TIF Bld
Ext Total		Cert Ext Tota		Cert TIF Lnd
Cert Class	C	Cert Ext Bld		

\*\*\*\* VALUE\_HISTORY # 2002

LAST UPDATED : 01/01/2002

Tax Year	01/01/2002	Cert Total	321800	Cert Ext Lnd
Dup Tax LUC	4420	Cert Bld	289500	Cert Abt LUC
Tax Land	32300	Cert Lnd	32300	Cert Abt Tota
Tax Bldg	289500	Cert Tax LUC	4420	Cert Abt Bld
Tax Total	321800	Cert Tax Tota	321800	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	289500	Cert TIF LUC
Ext Land		Cert Tax Lnd	32300	Cert TIF Tota
Ext Bldg		Cert Ext LUC		Cert TIF Bld
Ext Total		Cert Ext Tota		Cert TIF Lnd
Cert Class	C	Cert Ext Bld		

PARCEL ID: 2007 103-16-029 (Continued)

\*\*\*\* VALUE\_HISTORY # 2003

LAST UPDATED : 11/01/2003

Tax Year	01/01/2003	Cert Total	347200	Cert Ext Lnd
Dup Tax LUC	4420	Cert Bld	312300	Cert Abt LUC
Tax Land	34900	Cert Lnd	34900	Cert Abt Tota
Tax Bldg	312300	Cert Tax LUC	4420	Cert Abt Bld
Tax Total	347200	Cert Tax Tota	347200	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	312300	Cert TIF LUC
Ext Land		Cert Tax Lnd	34900	Cert TIF Tota
Ext Bldg		Cert Ext LUC		Cert TIF Bld
Ext Total		Cert Ext Tota		Cert TIF Lnd
Cert Class	C	Cert Ext Bld		

\*\*\*\* VALUE\_HISTORY # 2004

LAST UPDATED : 03/15/2005

Tax Year	01/01/2004	Cert Total	347200	Cert Ext Lnd
Dup Tax LUC	4420	Cert Bld	312300	Cert Abt LUC
Tax Land	34900	Cert Lnd	34900	Cert Abt Tota
Tax Bldg	312300	Cert Tax LUC	4420	Cert Abt Bld
Tax Total	347200	Cert Tax Tota	347200	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	312300	Cert TIF LUC
Ext Land		Cert Tax Lnd	34900	Cert TIF Tota
Ext Bldg		Cert Ext LUC		Cert TIF Bld
Ext Total		Cert Ext Tota		Cert TIF Lnd
Cert Class	C	Cert Ext Bld		

\*\*\*\* VALUE\_HISTORY # 2005

LAST UPDATED : 10/03/2005

Tax Year	01/01/2005	Cert Total	347200	Cert Ext Lnd
Dup Tax LUC	4420	Cert Bld	312300	Cert Abt LUC
Tax Land	34900	Cert Lnd	34900	Cert Abt Tota
Tax Bldg	312300	Cert Tax LUC	4420	Cert Abt Bld
Tax Total	347200	Cert Tax Tota	347200	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	312300	Cert TIF LUC
Ext Land		Cert Tax Lnd	34900	Cert TIF Tota
Ext Bldg		Cert Ext LUC		Cert TIF Bld
Ext Total		Cert Ext Tota		Cert TIF Lnd
Cert Class	C	Cert Ext Bld		

\*\*\*\* VALUE\_HISTORY # 2006

LAST UPDATED : 11/27/2006

Tax Year	01/01/2006	Cert Total	352000	Cert Ext Lnd
Dup Tax LUC	4420	Cert Bld	298200	Cert Abt LUC
Tax Land	53800	Cert Lnd	53800	Cert Abt Tota
Tax Bldg	298200	Cert Tax LUC	4420	Cert Abt Bld
Tax Total	352000	Cert Tax Tota	352000	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	298200	Cert TIF LUC
Ext Land		Cert Tax Lnd	53800	Cert TIF Tota
Ext Bldg		Cert Ext LUC		Cert TIF Bld
Ext Total		Cert Ext Tota		Cert TIF Lnd
Cert Class	C	Cert Ext Bld		

PARCEL ID: 2007 103-16-029 (Continued)

\*\*\*\* VALUE\_HISTORY # 2007

LAST UPDATED : 10/30/2007

Tax Year	01/01/2007	Cert Total	352000	Cert Ext Lnd
Dup Tax LUC	4420	Cert Bld	298200	Cert Abt LUC
Tax Land	53800	Cert Lnd	53800	Cert Abt Tota
Tax Bldg	298200	Cert Tax LUC	4420	Cert Abt Bld
Tax Total	352000	Cert Tax Tota	352000	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	298200	Cert TIF LUC
Ext Land		Cert Tax Lnd	53800	Cert TIF Tota
Ext Bldg		Cert Ext LUC		Cert TIF Bld
Ext Total		Cert Ext Tota		Cert TIF Lnd
Cert Class	C	Cert Ext Bld		

\*\*\*\* LAND # 1

LAST UPDATED : 11/27/2006

Land Type	PRM - PRIMARY	Depth Adjustm		Legal Front	100
Override Rate		Adjusted Unit	5	Legal Depth	
Effective Fro	100	Sub Value	53800	Site Adj Amt	
Site Adj Pct		Site Adj Pct		Site Adj Amt	
Site Adj Pct		Final Value	53800	Site Adj Amt	
Effective Dep		Override Valu		Square Feet	10750
Unit Value pe		Override Rate		Acres	.247
Unit Value pe	5	Topography	LV - LEVEL	Income Flag	N - NO
Unit Value pe		Lot Shape			

\*\*\*\* C\_I\_BUILDING # 1

LAST UPDATED :

Sketch		Single Fixtur	13	RCNLD	306771
Const Class	D - CLASS D	Foundation	CNC - CONCRETE	RCNLD Overrid	
Bsmt Type	FUL - FULL	Exterior Wall	BR - BRICK	Wall Height	12
Bsmt/ Gr Floo	CNC - CONCRETE	Framing	FR - WOOD / TIMBER	Base Floor Ar	6990
Total Story H	2	Insulation	N - NO	Heat Type	HWS - HOT-WATR/STM
Usable Area	6990	Roof Type	GBL - GABLE	Heat %	
Gross Floor A	10274	Roofing	CPS - COMPOSITION	Air Cond	N - NONE
Perimeter	258	Roof Joists	WD - WOOD	AC %	
Number of Uni	0	Roof Decking	WD - WOOD	Sprinkler	Y - YES
Avg Unit Size	0	Floor Joists	WD - WOOD	Sprnklr %	
Grade Pct	100	Floor Deckng	WD - WOOD SUB	Income Flag	N - NO
Condition	AVG - AVERAGE	Percent Compl	100	Num Occur	
Year New	1910	Reinspect	N - NO	Phy Pct Good	
Year Renovate		Office Area		Fun Pct Good	
Effective Yea	1950	Office Finish		Eco Pct Good	
Plumbing	ADQ - ADEQUATE	Mezz Area		Retail Area	
Total Fixture	25	Mezz Finish		Retail Finish	
Bathrooms	4	RCN	766928		
Halfbaths	0	RCN Override			

\*\*\*\* C\_I\_USE # 1/ 1

LAST UPDATED :

Use Code	322 - STGE WHSE BASEMEN	Floor Level	BMT - BASEMENT	RCN
Old Use Code	12	Area	3284	

\*\*\*\* C\_I\_USE # 1/ 3

LAST UPDATED :

Use Code	410 - MEDICAL OFFICE	Floor Level	1ST - FIRST	RCN
Old Use Code	02	Area	3284	

PARCEL ID: 2007 103-16-029 (Continued)

\*\*\*\* C\_I\_USE # 1/ 4 LAST UPDATED :

Use Code 410 - MEDICAL OFFICE Floor Level 2ND - SECOND RCN
Old Use Code 02 Area 3284

\*\*\*\* INCOME\_SUMMARY LAST UPDATED :

Income Method Vacancy 20 Gross Inc Ove
Rent Method Ovr Vac Pct Gross Inc 77240
Tenant Appeal Vac Amt 15448 EGIM Value
Condition Misc Income 0 Gr Rent Mult
Quality Effective Gro 51792 Ovr Grm
Rent Per Unit Expenses 44 Grm Income
Vacancy % Ovr Exp Pct Additional Bl 0
Expense % Exp Amt 27188 Additional La 0
Def Cap Rate Net Income 34604 Indicated Inc 247500
Def GRM Eco Cap Rate 13.98 Other Adj
Effective Yea Ovr Cap Rate XP SF
Gross Income 77240 Capitalized V 247526

\*\*\*\* INCOME\_DETAIL # 1 LAST UPDATED :

Bldg Class D - CLASS-D Eco Eff Gr 30896 RX Pct
Bldg Type 410 - MEDICAL-OFC Eco Exp Pct Other Income
Use Code 410 - MEDICAL-OFC Eco Net Inc 17302 OI Per Unit
Tenant Appeal AV - AVERAGE Eco Cap Rate OI Pct
Condition AVG - AVERAGE Eco Cap Value 123763 Total Income
Quality A - AVERAGE EGIM Tot Inc Per U
Income Methd M - MANUAL EGIM Value Tot Inc Pct
Rent Method S - SQUARE-FOOT Mkt Adj Fctr Total Expense
Bld Sec Grp Property Type Total Exp Per
Num Occur Income Year Total Exp Pct
Eff Yr Built 1950 Occupancy % NOI
Year Built 1910 Units NOI Per Unit
Square Feet N 3284 Unit Type NOI Pct
Num Units Rental Income NRA % 100
Eco Rent Un RI Per Unit Lease Data
Eco Gross In 38620 RI Pct Tenant Data
Eco Vac Pct Reimbursed XP Eco KP SF
Eco Misc In RX Per Unit Usable Area

\*\*\*\* INCOME\_DETAIL # 2 LAST UPDATED :

Bldg Class D - CLASS-D Eco Eff Gr 30896 RX Pct
Bldg Type 410 - MEDICAL-OFC Eco Exp Pct Other Income
Use Code 410 - MEDICAL-OFC Eco Net Inc 17302 OI Per Unit
Tenant Appeal AV - AVERAGE Eco Cap Rate OI Pct
Condition AVG - AVERAGE Eco Cap Value 123763 Total Income
Quality A - AVERAGE EGIM Tot Inc Per U
Income Methd M - MANUAL EGIM Value Tot Inc Pct
Rent Method S - SQUARE-FOOT Mkt Adj Fctr Total Expense
Bld Sec Grp Property Type Total Exp Per
Num Occur Income Year Total Exp Pct
Eff Yr Built 1950 Occupancy % NOI
Year Built 1910 Units NOI Per Unit
Square Feet N 3284 Unit Type NOI Pct
Num Units Rental Income NRA % 100
Eco Rent Un RI Per Unit Lease Data

PARCEL-ID: 2007 103-16-029 (Continued)

Eco Gross In	38620	RI Pct	Tenant Data
Eco Vac Pct		Reimbursed XP	Eco XP SF
Eco Misc In		RX Per Unit	Usable Area

\*\*\*\* OTHER\_IMPROVEMENT # 1 LAST UPDATED :

Type	050 - FENCE	Effective Age	1992	Other NEC	
Size	5000	Condition	G - GOOD	Income Flag	N - NO
Hgt/Depth	6	Pct Complete	100	Phy Pct Good	
Size Dsgntn	SF - SQUARE FEET	RCN	62300	Fun Pct Good	
Qual Gr Pct	100	RCN Override		Eco Pct Good	
Construction	MTL - METAL	RCNLD	47971		
Const Class		RCNLD Overrid			

\*\*\*\* OTHER\_IMPROVEMENT # 2 LAST UPDATED :

Type	200 - PAVING	Effective Age	1992	Other NEC	
Size	70	Condition	G - GOOD	Income Flag	N - NO
Hgt/Depth		Pct Complete	100	Phy Pct Good	
Size Dsgntn	LF - LINEAR FEET	RCN		Fun Pct Good	
Qual Gr Pct	100	RCN Override		Eco Pct Good	
Construction	MTL - METAL	RCNLD			
Const Class		RCNLD Overrid			

PARCEL ID: 2007 103-16-030

\*\*\*\* PARCEL

LAST UPDATED : 11/27/2006

Owner	2000 CARNEGIE, LLC	Validity	YNV - YES (NOT VERIFIED)	Owner Occ	
Address #		Source of Inf	M - MVP DATABASE	Image Name	
Unit #		Multiple Parc	Y - YES	Data Collecto	CDM -- C MARTIN
Street Direct		X Coord		Deed Type	WAR - WARRANTY
Street	PROSPECT	Y Coord		Grantee	2000 CARNEGIE, LLC
Street Suffix	AVE	Number of Uni		Grantor	3912 Prospect Ave Ltd
City	CLEVELAND	Unit Type		Inspection Da	
Zip Code	44115	Total Use Are		Precinct	
Property Clas	C - COMMERCIAL	Mineral Right		S.P. per Unit	
Sublot		Tax Abatement		Verification	11/21/2006
Taxing Distri	030 - CLEVELAND-E/R	Forest Land		Verifier	IMP - BTCH IMPRTD FRM M
Neighborhood	25081	Total Building	0	Zoning Code	
Economic Unit		Road Type		Zoning Use	
Tax LUC	4420 - MED CLINIC/ OFFIC	Water		Adj Sale Pric	
Condo Indicat	A - INVALID CODE	Sewer		Ext LUC	
Condo Complex		Gas		Abt LUC	
Total Assoc		Electricity		WIF LUC	
Sale Price	520000	Parcel Lot Si	8892		
Sale Date	10/16/2006	Prop Lot Size			

\*\*\*\* ASSOC\_PARCELS # 1

Parcel ID 10316029

\*\*\*\* NOTES # 1

Update ID

Note Date

Table Ref

PAR - PARCEL

Note Type

N - GENERAL NOTE

Notes PVG & FNC COMP 1/1/93.1991 VALUE REVISED BY BOR 01-15-93..

\*\*\*\* VALUATION

LAST UPDATED : 11/27/2006

Value System		Adjust Sale 1		Cap Value	
Value Date		Comp ID 2		Tot GRM Inc	
Tax Lnd Valu	53800	Adjust Sale 2		Adj Bldg	
Building	16400	Comp ID 3		Adj Land	
Tax Tot Valu	70200	Adjust Sale 3		Adj Total	
Ext Land	0	Comp ID 4		Bldg Adj Fact	
Ext Bldg	0	Adjust Sale 4		Comp Override	
Ext Total	0	Comp ID 5		Recalc Date	
Appraiser ID	VAS21	Adjust Sale 5		Ind EGIM Valu	
Apprais Date	08/02/2006	Added Land Va		Indicated Val	
Cost Land		Added Bldg Va		Adj Date	
RCN		Income Total		Land Adj Fact	
RCNLD		Income Date		MRA Date	
Det RCNLD		Cap Rate		Total Adj Fac	
Cost Total		EGIM		Unit Type	
Cost Date		Est.Eff. Gros		Units	
Mkt Adj Bldg		Est. Net. Gro		Cert Total	70200
Adj Cost		Sel Lnd Valu		Cert Bldg	16400
Est Land		Bldg		Cert Land	53800
Est Bldg		Sel Tot Valu		Cert Year	2006
Est Total		Exm Land		Cert Flag	C
Med Comp		Exm Bldg		Alert Flag	
Med Comp Date		Exm total		Alter Flag	
Comp ID 1		Value Method			

I hereby certify this to be a true copy of the original record on file in the office of an in custody of the County Auditor.

Frank Russo  
County Auditor

Dated 12-7-07 By *Sandy Williams*  
Deputy Auditor

PARCEL ID: 2007 103-16-030 (Continued)

\*\*\*\* VAL\_ADMIN

LAST UPDATED : 11/27/2006

Tax LUC	4420 - MED CLINIC/ OFFIC	Abt LUC	Certified Yea	2006
Tax Total	70200	Abt Total	Certified Cla	C
Tax Bldg	16400	Abt Bldg	Certified Tot	70200
Taxable	53800	Abated	Certified Bld	16400
Ext LUC		TIF LUC	Certified Lan	53800
Ext Total		TIF Total	Appraiser ID	VAS21
Ext Bldg		TIF Bldg	Appraisal Dat	08/02/2006
Exempt		TIF		

\*\*\*\* VALUE\_HISTORY # 1993

LAST UPDATED :

Tax Year	12/23/1993	Cert Total	Cert Ext Lnd
Dup Tax LUC		Cert Bld	Cert Abt LUC
Tax Land	20000	Cert Lnd	Cert Abt Tota
Tax Bldg	20300	Cert Tax LUC	Cert Abt Bld
Tax Total	40300	Cert Tax Tota	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	Cert TIF LUC
Ext Land		Cert Tax Lnd	Cert TIF Tota
Ext Bldg		Cert Ext LUC	Cert TIF Bld
Ext Total		Cert Ext Tota	Cert TIF Lnd
Cert Class		Cert Ext Bld	

\*\*\*\* VALUE\_HISTORY # 1994

LAST UPDATED :

Tax Year	12/27/1994	Cert Total	Cert Ext Lnd
Dup Tax LUC		Cert Bld	Cert Abt LUC
Tax Land	32300	Cert Lnd	Cert Abt Tota
Tax Bldg	20300	Cert Tax LUC	Cert Abt Bld
Tax Total	52600	Cert Tax Tota	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	Cert TIF LUC
Ext Land		Cert Tax Lnd	Cert TIF Tota
Ext Bldg		Cert Ext LUC	Cert TIF Bld
Ext Total		Cert Ext Tota	Cert TIF Lnd
Cert Class		Cert Ext Bld	

\*\*\*\* VALUE\_HISTORY # 1995

LAST UPDATED :

Tax Year	12/29/1995	Cert Total	Cert Ext Lnd
Dup Tax LUC		Cert Bld	Cert Abt LUC
Tax Land	32300	Cert Lnd	Cert Abt Tota
Tax Bldg	20300	Cert Tax LUC	Cert Abt Bld
Tax Total	52600	Cert Tax Tota	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	Cert TIF LUC
Ext Land		Cert Tax Lnd	Cert TIF Tota
Ext Bldg		Cert Ext LUC	Cert TIF Bld
Ext Total		Cert Ext Tota	Cert TIF Lnd
Cert Class		Cert Ext Bld	

PARCEL ID: 2007 103-16-030 (Continued)

\*\*\*\* VALUE\_HISTORY # 1996

LAST UPDATED : 01/01/1996

Tax Year	01/01/1996	Cert Total	52600	Cert Ext Lnd
Dup Tax LUC	4000	Cert Bld	20300	Cert Abt LUC
Tax Land	32300	Cert Lnd	32300	Cert Abt Tota
Tax Bldg	20300	Cert Tax LUC	4000	Cert Abt Bld
Tax Total	52600	Cert Tax Tota	52600	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	20300	Cert TIF LUC
Ext Land		Cert Tax Lnd	32300	Cert TIF Tota
Ext Bldg		Cert Ext LUC		Cert TIF Bld
Ext Total		Cert Ext Tota		Cert TIF Lnd
Cert Class	C	Cert Ext Bld		

\*\*\*\* VALUE\_HISTORY # 1997

LAST UPDATED : 01/01/1997

Tax Year	01/01/1997	Cert Total	54200	Cert Ext Lnd
Dup Tax LUC	4000	Cert Bld	21000	Cert Abt LUC
Tax Land	33200	Cert Lnd	33200	Cert Abt Tota
Tax Bldg	21000	Cert Tax LUC	4000	Cert Abt Bld
Tax Total	54200	Cert Tax Tota	54200	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	21000	Cert TIF LUC
Ext Land		Cert Tax Lnd	33200	Cert TIF Tota
Ext Bldg		Cert Ext LUC		Cert TIF Bld
Ext Total		Cert Ext Tota		Cert TIF Lnd
Cert Class	C	Cert Ext Bld		

\*\*\*\* VALUE\_HISTORY # 1998

LAST UPDATED : 01/01/1998

Tax Year	01/01/1998	Cert Total	54200	Cert Ext Lnd
Dup Tax LUC	4000	Cert Bld	21000	Cert Abt LUC
Tax Land	33200	Cert Lnd	33200	Cert Abt Tota
Tax Bldg	21000	Cert Tax LUC	4000	Cert Abt Bld
Tax Total	54200	Cert Tax Tota	54200	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	21000	Cert TIF LUC
Ext Land		Cert Tax Lnd	33200	Cert TIF Tota
Ext Bldg		Cert Ext LUC		Cert TIF Bld
Ext Total		Cert Ext Tota		Cert TIF Lnd
Cert Class	C	Cert Ext Bld		

\*\*\*\* VALUE\_HISTORY # 1999

LAST UPDATED : 01/01/1999

Tax Year	01/01/1999	Cert Total	54200	Cert Ext Lnd
Dup Tax LUC	4000	Cert Bld	21000	Cert Abt LUC
Tax Land	33200	Cert Lnd	33200	Cert Abt Tota
Tax Bldg	21000	Cert Tax LUC	4000	Cert Abt Bld
Tax Total	54200	Cert Tax Tota	54200	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	21000	Cert TIF LUC
Ext Land		Cert Tax Lnd	33200	Cert TIF Tota
Ext Bldg		Cert Ext LUC		Cert TIF Bld
Ext Total		Cert Ext Tota		Cert TIF Lnd
Cert Class	C	Cert Ext Bld		

PARCEL ID: 2007 103-16-030 (Continued)

\*\*\*\* VALUE\_HISTORY # 2000

LAST UPDATED : 01/01/2000

Tax Year	01/01/2000	Cert Total	46900	Cert Ext Lnd
Dup Tax LUC	4000	Cert Bld	14600	Cert Abt LUC
Tax Land	32300	Cert Lnd	32300	Cert Abt Tota
Tax Bldg	14600	Cert Tax LUC	4000	Cert Abt Bld
Tax Total	46900	Cert Tax Tota	46900	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	14600	Cert TIF LUC
Ext Land		Cert Tax Lnd	32300	Cert TIF Tota
Ext Bldg		Cert Ext LUC		Cert TIF Bld
Ext Total		Cert Ext Tota		Cert TIF Lnd
Cert Class	C	Cert Ext Bld		

\*\*\*\* VALUE\_HISTORY # 2001

LAST UPDATED : 01/01/2001

Tax Year	01/01/2001	Cert Total	46900	Cert Ext Lnd
Dup Tax LUC	4000	Cert Bld	14600	Cert Abt LUC
Tax Land	32300	Cert Lnd	32300	Cert Abt Tota
Tax Bldg	14600	Cert Tax LUC	4000	Cert Abt Bld
Tax Total	46900	Cert Tax Tota	46900	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	14600	Cert TIF LUC
Ext Land		Cert Tax Lnd	32300	Cert TIF Tota
Ext Bldg		Cert Ext LUC		Cert TIF Bld
Ext Total		Cert Ext Tota		Cert TIF Lnd
Cert Class	C	Cert Ext Bld		

\*\*\*\* VALUE\_HISTORY # 2002

LAST UPDATED : 01/01/2002

Tax Year	01/01/2002	Cert Total	46900	Cert Ext Lnd
Dup Tax LUC	4420	Cert Bld	14600	Cert Abt LUC
Tax Land	32300	Cert Lnd	32300	Cert Abt Tota
Tax Bldg	14600	Cert Tax LUC	4420	Cert Abt Bld
Tax Total	46900	Cert Tax Tota	46900	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	14600	Cert TIF LUC
Ext Land		Cert Tax Lnd	32300	Cert TIF Tota
Ext Bldg		Cert Ext LUC		Cert TIF Bld
Ext Total		Cert Ext Tota		Cert TIF Lnd
Cert Class	C	Cert Ext Bld		

\*\*\*\* VALUE\_HISTORY # 2003

LAST UPDATED : 11/01/2003

Tax Year	01/01/2003	Cert Total	50600	Cert Ext Lnd
Dup Tax LUC	4420	Cert Bld	15700	Cert Abt LUC
Tax Land	34900	Cert Lnd	34900	Cert Abt Tota
Tax Bldg	15700	Cert Tax LUC	4420	Cert Abt Bld
Tax Total	50600	Cert Tax Tota	50600	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	15700	Cert TIF LUC
Ext Land		Cert Tax Lnd	34900	Cert TIF Tota
Ext Bldg		Cert Ext LUC		Cert TIF Bld
Ext Total		Cert Ext Tota		Cert TIF Lnd
Cert Class	C	Cert Ext Bld		

PARCEL ID: 2007 103-16-030 (Continued)

\*\*\*\* VALUE\_HISTORY # 2004

LAST UPDATED : 03/15/2005

Tax Year	01/01/2004	Cert Total	50600	Cert Ext Lnd
Dup Tax LUC	4420	Cert Bld	15700	Cert Abt LUC
Tax Land	34900	Cert Lnd	34900	Cert Abt Tota
Tax Bldg	15700	Cert Tax LUC	4420	Cert Abt Bld
Tax Total	50600	Cert Tax Tota	50600	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	15700	Cert TIF LUC
Ext Land		Cert Tax Lnd	34900	Cert TIF Tota
Ext Bldg		Cert Ext LUC		Cert TIF Bld
Ext Total		Cert Ext Tota		Cert TIF Lnd
Cert Class	C	Cert Ext Bld		

\*\*\*\* VALUE\_HISTORY # 2005

LAST UPDATED : 10/03/2005

Tax Year	01/01/2005	Cert Total	50600	Cert Ext Lnd
Dup Tax LUC	4420	Cert Bld	15700	Cert Abt LUC
Tax Land	34900	Cert Lnd	34900	Cert Abt Tota
Tax Bldg	15700	Cert Tax LUC	4420	Cert Abt Bld
Tax Total	50600	Cert Tax Tota	50600	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	15700	Cert TIF LUC
Ext Land		Cert Tax Lnd	34900	Cert TIF Tota
Ext Bldg		Cert Ext LUC		Cert TIF Bld
Ext Total		Cert Ext Tota		Cert TIF Lnd
Cert Class	C	Cert Ext Bld		

\*\*\*\* VALUE\_HISTORY # 2006

LAST UPDATED : 11/27/2006

Tax Year	01/01/2006	Cert Total	70200	Cert Ext Lnd
Dup Tax LUC	4420	Cert Bld	16400	Cert Abt LUC
Tax Land	53800	Cert Lnd	53800	Cert Abt Tota
Tax Bldg	16400	Cert Tax LUC	4420	Cert Abt Bld
Tax Total	70200	Cert Tax Tota	70200	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	16400	Cert TIF LUC
Ext Land		Cert Tax Lnd	53800	Cert TIF Tota
Ext Bldg		Cert Ext LUC		Cert TIF Bld
Ext Total		Cert Ext Tota		Cert TIF Lnd
Cert Class	C	Cert Ext Bld		

\*\*\*\* VALUE\_HISTORY # 2007

LAST UPDATED : 10/30/2007

Tax Year	01/01/2007	Cert Total	70200	Cert Ext Lnd
Dup Tax LUC	4420	Cert Bld	16400	Cert Abt LUC
Tax Land	53800	Cert Lnd	53800	Cert Abt Tota
Tax Bldg	16400	Cert Tax LUC	4420	Cert Abt Bld
Tax Total	70200	Cert Tax Tota	70200	Cert Abt Lnd
Dup Ext LUC		Cert Tax Bld	16400	Cert TIF LUC
Ext Land		Cert Tax Lnd	53800	Cert TIF Tota
Ext Bldg		Cert Ext LUC		Cert TIF Bld
Ext Total		Cert Ext Tota		Cert TIF Lnd
Cert Class	C	Cert Ext Bld		

PARCEL ID: 2007 103-16-030 (Continued)

\*\*\*\* LAND # 1

LAST UPDATED : 11/27/2005

Land Type	PRM - PRIMARY	Depth Adjustm		Legal Front
Override Rate		Adjusted Unit	5	Legal Depth
Effective Fro		Sub Value	53800	Site Adj Amt
Site Adj Pct		Site Adj Pct		Site Adj Amt
Site Adj Pct		Final Value	53800	Site Adj Amt
Effective Dep		Override Valu		Square Feet
Unit Value pe		Override Rate		Acres
Unit Value pe	5	Topography	RO - ROLLING	Income Flag
Unit Value pe		Lot Shape		N - NO

\*\*\*\* OTHER\_IMPROVEMENT # 1

LAST UPDATED :

Type	200 - PAVING	Effective Age	1992	Other NEC
Size	10000	Condition	G - GOOD	Income Flag
Hgt/Depth		Pct Complete		Phy Pct Good
Size Dsgntn	SF - SQUARE FEET	RCN	18200	Fun Pct Good
Qual Gr Pct	100	RCN Override		Eco Pct Good
Construction	ASP - ASPHALT	RCNLD	13650	
Const Class		RCNLD Overrid		

\*\*\*\* OTHER\_IMPROVEMENT # 2

LAST UPDATED :

Type	050 - FENCE	Effective Age	1992	Other NEC
Size	200	Condition	G - GOOD	Income Flag
Hgt/Depth	6	Pct Complete	100	Phy Pct Good
Size Dsgntn	LF - LINEAR FEET	RCN	3613	Fun Pct Good
Qual Gr Pct	145	RCN Override		Eco Pct Good
Construction	MTL - METAL	RCNLD	2710	
Const Class		RCNLD Overrid		



ORAL HEARING WORKSHEET AND JOURNAL ENTRY

38 PC TB

Journal # 402B-07

Date of Hearing 30-AUG-2007 B Tax Year 2006 Board Members Present Green Card Attached Yes No

Parcel # 103-16-029 et al. Witness(es) Sworn In Yes No Hearing Taped Yes No

Appearance: James Hewitt III - atty (BOE (216) 241-3700
Michael Lear - atty owner (216) 696-0900
Larry Zuckerman - owner (216) 696-0900

Complainant: 200704020426 Cleveland Municipal School District v. 2200 CARNEGIE, LLC

Counter-Complainant:

Location of Property: 3912 PROSPECT AVE, CLEVELAND

Table with columns: Current 2006 Value, LAND M/V, BUILDING M/V, TOTAL M/V. Values: \$107,600, \$314,600, \$422,200. Increase Asked: \$97,800.

DESCRIPTION: Commercial

EXHIBITS

- A - Original Complaint BOE
B - Counter Complaint Owner
List of items: Deed, Conveyance, Closing Statement, Appraisal, Owners opinion of value, Property Record Card, Photos, Bldg. Characteristics, Rent Roll, Income & Expense Report, Stipulation: Year.

PROPERTY VALUATIONS

Table with columns: Parcel #, Total Current Value, Total Change(+ or -), BOR Decision, Total New Market Value. Values: 103-16-029, \$107,600, +\$97,800, 520,000.

COMMENTS (i.e. request for additional information), etc:

Held 30 days for counter to submit info - DID NOT
Sale Oct 16, 2006 for 520,000

DECISION OF THE BOARD OF REVISION

Signatures: Commissioner Thomas Boyd, Auditor James Hewitt III, Treasurer [Signature]

BOARD OF REVISION DECISION: Upon consideration of the complaints and after investigation, research, examination of testimony and evidence submitted in accordance with the law, the Board found the taxable value to be as indicated above.

2909

EXHIBIT



ORAL HEARING WORKSHEET AND JOURNAL ENTRY

Parcel # 103-16-029

4025-07

	Current Value	Change(+ or -)	BOR Decision	New Market Value
Land	\$53,800			53,800
Building	\$298,200	+179,600		377,800
Total	\$352,000			431,600

Parcel # 103-16-030

	Current Value	Change(+ or -)	BOR Decision	New Market Value
Land	\$53,800			53,800
Building	\$16,400	+18,200		34,600
Total	\$70,200			88,400

2209

# Cuyahoga County Board of Revision

County Administration Building Room 232  
1219 Ontario Street Cleveland, Ohio 44113

(216) 443-7195 / Ohio Relay Service 711

Fax: (216) 443-8282

Email: 2004resbor@cuyahogacounty.us

COMMISSIONER

Timothy F. Hagan

AUDITOR

Frank Russo

TREASURER

James Rokakis

October 11, 2007

2200 Carnegie LLC  
3912 Prospect Avenue  
Cleveland, OH 44115

Re: Complaint No. 200704020426  
(Cleveland Municipal School District)  
Parcel No. 103-16-029 et al.  
Journal No. 402B-07

Dear Taxpayer:

I am writing to inform you that upon consideration of the evidence and testimony presented at your oral hearing, the Board of Revision has rendered the following decision for the tax year 2006. As Administrator of the Board of Revision, it is my duty to inform you of their action.

103-16-029 et al.	Total Current Values	Total New Values	Decision
Land	107,600	107,600	0
Building	314,600	412,400	+97,800
Total	422,200	520,000	+97,800

In order to assure your right to pursue this complaint further, you may appeal this decision directly to the Court of Common Pleas of Cuyahoga County pursuant to Section 5717.05, or the Ohio Board of Tax Appeals under the provisions of Section 5717.01 of the Ohio Revised Code within 30 days from the date of mailing of this letter.

If no action is taken, the Board's decision will be reflected in your next tax bill.

If you have any questions, please call the Board of Revision at (216) 443-7195.

Respectfully,



Robert M. Chambers, Administrator  
Cuyahoga County Board of Revision

RMC\hxh  
CERTIFIED MAIL  
cc: James Hewitt III

**EXHIBIT**

G

103-16-029	Current Values	New Values	Decision
Land	53,800	53,800	0
Building	298,200	377,800	+79,600
Total	352,000	431,600	+79,600

103-16-030	Current Values	New Values	Decision
Land	53,800	53,800	0
Building	16,400	34,600	+18,200
Total	70,200	88,400	+18,200

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Cleveland B.O.E  
1380 E. Sixth St  
Cleveland, OH 44114  
402 B-07 103-16-029 et al

7007 0710 0005 0167 4313

PS Form 3811, February 2004

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
X *R.W. Butts*  Agent  Addressee

B. Received by (Printed Name) C. Date of Delivery  
10-12-07

D. Is delivery address different from item 1?  Yes  No  
If YES, enter delivery address below:

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

Domestic Return Receipt

102595-02-M-1540

9 of 2)	Postmaster, For Name of receiving employee)	Complete by TYPENET		

Handwritten notes on the right side of the form, including "402 B-07" and "103-16-029".

- Check type of mail or service:
- Certified
  - COD
  - Delivery Confirmation
  - Express Mail
  - Insured
  - Registered
  - Return Receipt for Merchandise
  - Signature Confirmation

A fix Stamp Here (If issued as a return receipt or for additional copies of this bill)

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

2200 Carnegie LLC  
3912 Prospect Ave  
Cleveland, OH 44115  
402B-07 103-16-029 et al

7007 0710 0005 0167 4306

PS Form 3811, February 2004

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
X *C. Shookman*  Agent  Addressee

B. Received by (Printed Name) C. Date of Delivery  
103-16-029

D. Is delivery address different from item 1?  Yes  No  
If YES, enter delivery address below:

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

Domestic Return Receipt

102595-02-M-1540

Special Handling	
Restricted Delivery	
Return Receipt	

Article Number	Address (Name, Street, City, State, & ZIP Code)	Postage	Fee	Handling Charge	Actual Value if Registered	Insured Value	Due Sender if COD	F	C	SC	SH	NO	RR
4313	Clev B.O.E 1380 E. Sixth St Cleveland, OH 44114												
4306	2200 Carnegie LLC 3912 Prospect Ave Cleveland, OH 44115												

# County of Cuyahoga

## BOARD OF REVISION

County Administration Building

1219 Ontario Street, Room 232

Cleveland, Ohio 44113

(216) 443-7195 / Ohio Relay Service 711

Email: 2004resbor@cuyahogacounty.us

Facsimile: (216) 443-8282

Commissioner  
Jimmy Dimora

Auditor  
Frank Russo

Treasurer  
James Rokakis

December 10, 2007

Board of Education of the Cleveland Municipal School District  
1380 East Sixth Street  
Cleveland OH 44114

Re: Parcel No. **103-16-029/030**  
Complaint No. 200704020426  
2200 Carnegie, LLC

Dear Complainants:

In reference to the above captioned complaint, in which you were a party to the proceedings before the Cuyahoga County Board of Revision, please be advised that the Board of Revision has received notice that an Appeal has been taken to the Court of Common Pleas. The Appeals have been assigned C.C.P. No. 07-641119. A copy of said Appeal is attached hereto.

Respectfully,



Frank Russo, Secretary  
Cuyahoga County Board of Revision

FR/km  
Enclosure  
CERTIFIED MAIL  
Cc: James H Hewitt, III, Esq.

**EXHIBIT** *H*

**County of Cuyahoga**  
**BOARD OF REVISION**  
County Administration Building  
1219 Ontario Street, Room 232  
Cleveland, Ohio 44113  
(216) 443-7195 / Ohio Relay Service 711

Email: 2004resbor@cuyahogacounty.us

Facsimile: (216) 443-8282

**Commissioner**  
**Jimmy Dimora**

**Auditor**  
**Frank Russo**

**Treasurer**  
**James Rokakis**

September 25, 2008

2200 Carnegie LLC  
c/o Larry Zukerman  
3912 Prospect Ave.  
Cleveland OH 44115

Re: Parcel No. 103-16-029

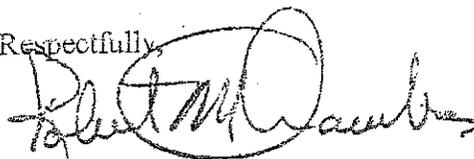
Dear Taxpayer:

In compliance with Section 5715.19 and 5717.01 of the Ohio Revised Code, I am writing to inform you that the Board of Education respective to the location of the above-captioned property, has filed a valuation complaint requesting an increase in the assessed value by \$17,500 or more, with the Board of Revision (BOR).

This law provides the property owner an opportunity to file a counter-complaint with the BOR, within 30 days after receiving this notice. A copy of the complaint filed by the Board of Education is enclosed. A complaint form with instructions is also enclosed if you choose to file a counter-complaint.

If you have any questions or need assistance in filing, please call the Board of Revision at (216) 443-7195.

Respectfully,



Robert M. Chambers, Administrator  
Cuyahoga County Board of Revision

RMC:bor  
Enclosures  
CERTIFIED MAIL  
Cc: S. Michael Lear, Esq.

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

FILED

2010 AUG 30 P 3:26

CV09702890  
64810954

2200 Carnegie LLC :  
Appellant, :  
vs :  
Cuyahoga County Board of Revision :  
et al, :  
Appellees. :

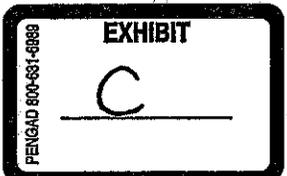
CASE NO. CV 702890  
JUDGE BRIDGET M. McCAFFERTY  
**NOTICE OF FILING COPY OF  
BOARD OF REVISION  
HEARING TRANSCRIPT OF  
APRIL 16, 2009**

Notice is hereby given that on August 30, 2010 Appellees Cuyahoga County Auditor and Cuyahoga County Board of Revision by the undersigned counsel, filed with this Court a copy of the Board of Revision hearing transcript of April 16, 2010.

Respectfully submitted,

WILLIAM D. MASON,  
Cuyahoga County Prosecutor

*Saundra Curtis-Patrick*  
SAUNDRA CURTIS-PATRICK (0027907)  
Assistant Prosecuting Attorney  
The Justice Center, Courts Tower  
1200 Ontario Street – 8<sup>th</sup> Floor  
Cleveland, Ohio 44113  
Phone: 216-443-7785 Fax: 216/ 443-7602  
E-mail: scurtispatrick@cuyahogacounty.us  
*Attorney for Appellees*

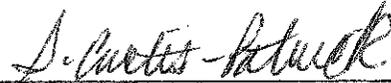


CERTIFICATE OF SERVICE

A copy of the *Notice of Filing Copy of Board of Revision Hearing Transcript of April 16, 2009* was filed with the Clerk of Courts and sent by regular U.S. mail this 30 day of August , 2010 to the following:

S. Michael Lear, Esq.  
Zukerman, Daiker & Lear Co. L.P.A.  
3912 Prospect Avenue, East  
Cleveland, OH 44115

James H. Hewitt, III, Esq.  
3043 Superior Avenue  
Cleveland, OH 44114



---

SAUNDRA CURTIS-PATRICK  
Assistant Prosecuting Attorney

**BOARD OF REVISION – BOARD “B”**  
4/16/2009

Case #200704020426 (2006), Parcel 103-16-029, Cleveland Municipal School District

Case #2008102900001 (2006), Parcel 103-16-029, Carnegie, LLC

Pat Carney representing County Treasurer Jim Rokakis; Brian Day representing County Auditor Frank Russo; and Tom Bush representing the County Commissioners.

Starting with Mr. Desmone, state your name, your telephone number and tell us what your capacity is.

John Desmone here for the Cleveland Board of Education complaint in this matter. Phone number 216-241-5700.

Larry Zukerman, a member of 2200 Carnegie LLC (216-696-0900). Pat Carney: are you also legal? Zukerman: no, my legal partner resigned. I represent ...

Michael Lear, a member of 2200 Carnegie LLC (216-696-0900).

Pat Carney: Mr. Zukerman, are you an attorney? Zukerman: I am.

Pat Carney: presume to be under oath and we're hearing complaint on Parcel 103-16-029 and 030 for tax year 2006. This is, ... who filed the complaint with this Board? Did you file it? (muffled speaking ... can't hear response).

Pat Carney: Cleveland Municipal School District v. 2200 Carnegie LLC. The Auditor currently has a fair market value of \$422,200.00. The school district is seeking an increase of \$97,800.00 for a total fair market value of \$520,000.00. Did you guys counterfile on this one or no?

Zukerman/Lear (?): there was a counter complaint filed. Carney: O.K. and what value were you seeking? Zukerman/Lear: we were requesting to keep it at \$422,500.00 and requesting that the Auditor's value be maintained. Carney: we will first hear testimony from Mr. Desmone representing the school district. We will note for the record that this parcel was previously before the Board and you folks filed a motion of appeal in Common Pleas Court claiming you weren't notified of the hearing? Desmone: that's correct. Carney: O.K., and it was remanded back to us from the Court of Common Pleas to give notice to the taxpayer of the Board's original complaint and the opportunity to file a counter complaint, and will now hear testimony from Mr. Desmone.

Mr. Desmone: the property owner's job has been sensitive and to direct properties itself. The basis for the Board of Education's complaint was a reported sale which occurred on 10/16/06 for \$520,000.00, a copy of the deed with this amount is graciously being paid and is attached to the complaint. There's something in the files there that the Board needed additional copies and to find those \_\_\_\_\_. Based upon the sale which was recorded about 9 and a half ... 10 and a half months after a tax lien date of 1/1/06, the Board of Education requested a significant increase to reflect the sale. Note that there are two parcels here – Parcel 29 and Parcel 30. The Auditor has

a building on Parcel 29 but no building on Parcel 30. When we had done a complaint, we had just allocated between the two based on the Auditor's original value, but the Board put it all on the building, and per past practice I had no objections. Regardless, based upon the sale, the Board had sought an increase of \$97,800.00 as a \_\_\_\_\_ and that can be carried forward to here.

Pat Carney: Gentlemen? Zukerman/Lear: Our position is that with the sale again that occurred back in October of 2006 for \$520,000 ... (someone else): arm's length? Answer: it was \$520 ... Carney: arm's length? Arm's length? Was it an arm's length sale? Answer: Yes. O.K. Zukerman/Lear: since that time obviously the market conditions had deteriorated. We don't believe there's any evidence to support that at least for tax years 2007 and 2008 that the tax bill had a valid market value of the property. Carney: Well once it's established that it was an arm's length sale, it's up to you to prove that it's not, so if you have any evidence to support that, we will take that evidence right now. Zukerman/Lear: we don't have any evidence with us to support the lower value. Carney: O.K. Anything else?

Can I talk? (not sure who's speaking). All right, I used to have a tenant in the building; I no longer have a tenant in the building. I can't get a tenant in the building. There is property all around me that is for sale that can't be sold for prices per square foot that are cheaper than what I purchased the building for. There is property all up and down Prospect Avenue that is empty and that have absolutely no tenants and it can't attract any tenants. I dare say I couldn't sell the building before for what I paid for the building, and I would think that I could sell it for \$400,000. I don't think I could quite give it away, because that's about all you can do with commercial property on Prospect Avenue in the City of Cleveland at this point in time. It's clearly an outrage what I paid for it and ... Carney: now when you bought it in '06, there was a tenant there? Owner: there was a tenant there, correct. Carney: and they stayed until when? Owner: they left when we moved in. Carney: now were you under the assumption that they were going to be there? Owner: No, no, no ... I had tenants who moved in with me. Carney: O.K., and when did that happen? Owner: When? When I moved in, which was January 5<sup>th</sup> of '07. Carney: O.K. And what rent did they pay and how long did they stay? Owner: they paid \$1250.00 per month. Carney: O.K. Owner: plus their prorated share of the expenses - copy machine, postage machine, um, and they stayed until the ... October of last year. Carney: O.K. Owner: they moved to Westlake because they no longer wanted to be in the City of Cleveland. Carney: Now I'm surmising under tenant law, that this was an attorney who was using some of your facilities - like a receptionist and things like that? Owner: correct, correct. Carney: O.K. So they were like seeing somebody in your building? Owner: yes sir.

Pat Carney: All right, Mr. Desmone, anything else for the county? Mr. Desmone: just to note for the record that certain property in question ... county records show that you got about a half acre here for the two lots that show about just under 7,000 square feet of building. (more mumbling).

Pat Carney: all right gentlemen. Thank you very much. You will be notified of a formal decision in writing in about eight weeks. Thanks for coming down.

(Transcribed by Kate Hydock, County Treasurer's representative on 8/26/2010, 12:30 PM.)

CUYAHOGA COUNTY BOARD OF REVISION  
CERTIFIED COPY  
BY: Kathleen M. Hydock  
DATE: 8-26-2010 86



64815554

# IN THE COURT OF COMMON PLEAS CUYAHOGA COUNTY, OHIO



2200 CARNEIGIE, LLC  
Plaintiff

Case No: CV-09-702890

Judge: BRIDGET M MCCAFFERTY

CUYAHOGA COUNTY BOARD OF REVISION, ET AL  
Defendant

## JOURNAL ENTRY

THE COURT, HAVING BEEN NOTIFIED THAT THE DEFENDANT HAS FILED THE TRANSCRIPT OF THE UNDERLYING HEARING IN THIS MATTER HEREBY SETS THE FOLLOWING SCHEDULE FOR THE FILING OF SUPPLEMENTAL BRIEFS:

APPELLANT'S SUPPLEMENTAL BRIEF: DUE SEPTEMBER 14, 2010

APPELLEE'S SUPPLEMENTAL BRIEF: DUE SEPTEMBER 28, 2010

\_\_\_\_\_  
Judge Signature

\_\_\_\_\_  
Date

8-31-10

RECEIVED FOR FILING

SEP 01 2010

GERALD E. FUERST, CLERK  
By [Signature] Deputy

PROCESSED

SEP 07 2010

GERALD E. FUERST, CLERK  
IMAGING DEPARTMENT

KP

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

2009 AUG 31 P 3:42

2200 CARNEGIE, LLC  
3912 Prospect Avenue  
Cleveland, Ohio 44115,

GERALD E. FUERST  
CLERK OF COURTS  
CUYAHOGA COUNTY

CASE Complaint  
BRIDGET M MCCAFFER  
CV 09 702890

Appellant,

NOTICE OF APPEAL

-vs-

CUYAHOGA COUNTY BOARD OF  
REVISION  
County Administration Building Room 232  
1219 Ontario Street  
Cleveland, Ohio 44113,

-and-

FRANK RUSSO, Cuyahoga County  
Auditor  
1219 Ontario Street  
Cleveland, Ohio 44113,

-and-

BOARD OF EDUCATION OF THE  
CLEVELAND MUNICIPAL SCHOOL  
DISTRICT  
1380 East Sixth Street  
Cleveland, Ohio 44114,

Appellees.

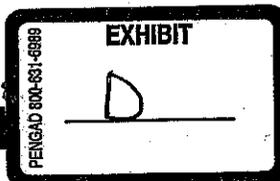
S. 100.00 POSTED  
SEP 1 2009  
GERALD E. FUERST  
CLERK OF COURTS  
CUYAHOGA COUNTY

Now comes Appellant 2200 Carnegie, LLC, the property owner herein, by and through undersigned counsel, and hereby serves Notice of its Appeal to the Cuyahoga County Court of Common Pleas, pursuant to ORC 5717.05 from the decision rendered by the Board of Revision for the tax year 2006 which was rendered on August 6, 2009, a copy of which is attached hereto.



ZUKERMAN,  
AIKER & LEAR CO., L.P.A.  
Attorneys at Law  
12 PROSPECT AVE., EAST  
LEVELAND, OHIO 44115  
Telephone (216) 696-0900  
Fax (216) 696-8800

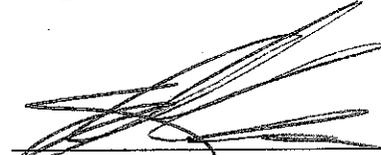
CV09702



9352063

Appellees are the Cuyahoga County Board of Revision; Frank Russo, Cuyahoga County Auditor; and the Board of Education of the Cleveland Municipal School District.

Respectfully Submitted,



CARRY W. ZUKERMAN, Esq.

(#0029498)

S. MICHAEL LEAR, Esq.

(#0041544)

ZUKERMAN, DAIKER & LEAR CO., L.P.A.

3912 Prospect Avenue

Cleveland, Ohio 44115

(216) 696-0900



ZUKERMAN,  
DAIKER & LEAR CO., L.P.A.

Attorneys at Law

3912 PROSPECT AVE., EAST  
CLEVELAND, OHIO 44115

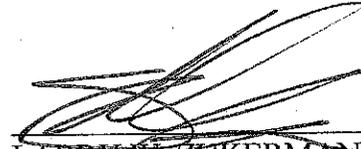
Telephone (216) 696-0900

Fax (216) 696-8800

CERTIFICATE OF SERVICE

I hereby certify that a true copy of foregoing has been sent by Certified U.S. Mail to Appellees:

1. JAMES H. HEWITT, III, Counsel for Board of Education of the Cleveland Municipal School District, at: James H. Hewitt Co., LPA, 3043 Superior Ave., Cleveland, Ohio 44114-4340;
2. FRANK RUSSO, Cuyahoga County Auditor, 1219 Ontario Street, Cleveland, Ohio 44113 this    day of September, 2009.



LARRY W. ZUKERMAN, Esq.  
S. MICHAEL LEAR, Esq.



# Cuyahoga County Board of Revision

County Administration Building Room 232  
1219 Ontario Street Cleveland, Ohio 44113

(216) 443-7195 / Ohio Relay Service 711 Fax: (216) 443-8282 Email: 2004resbor@cuyahogacounty.us

COMMISSIONER  
Timothy F. Hagan

AUDITOR  
Frank Russo

TREASURER  
James Rokakis

August 6, 2009

2200 Carnegie LLC  
3912 Prospect Avenue  
Cleveland, OH 44115

Re: Complaint No. 200704020426  
(Cleveland Municipal School District)  
Parcel No. 103-16-029 et al.  
Journal No. 443B-09

Dear Taxpayer:

I am writing to inform you that upon consideration of the evidence and testimony presented at your oral hearing, the Board of Revision has rendered the following decision for the tax year 2006. As Administrator of the Board of Revision, it is my duty to inform you of their action.

103-16-029 et al.	Total Current Values	Total New Values	Decision
Land	107,600	107,600	0
Building	314,600	412,400	+97,800
Total	422,200	520,000	+97,800

In order to assure your right to pursue this complaint further, you may appeal this decision directly to the Court of Common Pleas of Cuyahoga County pursuant to Section 5717.05, or the Ohio Board of Tax Appeals under the provisions of Section 5717.01 of the Ohio Revised Code within 30 days from the date of mailing of this letter.

If no action is taken, the Board's decision will be reflected in your next tax bill.

If you have any questions, please call the Board of Revision at (216) 443-7195.

Respectfully,



Robert M. Chambers, Administrator  
Cuyahoga County Board of Revision

RMC\mk1  
CERTIFIED MAIL  
cc: James Hewitt III

103-16-029	Current Values	New Values	Decision
Land	53,800	53,800	0
Building	298,200	377,800	+79,600
Total	352,000	431,600	+79,600

103-16-030	Current Values	New Values	Decision
Land	53,800	53,800	0
Building	16,400	34,600	+18,200
Total	70,200	88,400	+18,200



67567631



# IN THE COURT OF COMMON PLEAS CUYAHOGA COUNTY, OHIO

2200 CARNEIGIE, LLC  
Plaintiff

Case No: CV-09-702890

Judge: MICHAEL ASTRAB

CUYAHOGA COUNTY BOARD OF REVISION, ET AL  
Defendant

## JOURNAL ENTRY

96 DISP.OTHER - FINAL

UPON CONSIDERATION OF THE ENTIRE RECORD, THE COURT HEREBY AFFIRMS THE BOARD OF REVISION'S VALUATION OF THE TAXABLE VALUE OF THE SUBJECT PROPERTY.  
COURT COST ASSESSED TO THE PLAINTIFF(S).

Judge Signature

Date

*[Handwritten Signature]* 3/8/11

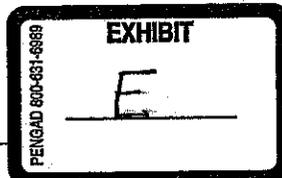
RECEIVED FOR FILING

MAR 09 2011

GERALD E. FUERST, CLERK

By *[Handwritten Signature]* Dep.

- 96  
03/08/2011



Page 1 of 1

16