

ORIGINAL

IN THE SUPREME COURT  
STATE OF OHIO  
APPEAL FROM THE BOARD OF TAX APPEALS

Board of Education of the Akron )  
City School District, )  
 )  
Appellee, )  
 )  
v. )  
 )  
Summit County Board of Revision, )  
Summit County Fiscal Officer and the Tax )  
Commissioner of the State of Ohio, )  
 )  
Appellees, )  
 )  
and )  
 )  
Rodger L. Barkoff and Sharon L. Barkoff, )  
Trustees, )  
 )  
Appellant. )

SUPREME COURT CASE  
NUMBER: ~~12-1542~~  
BOARD OF TAX APPEALS  
CASE NO. 2009-K-3018

NOTICE OF APPEAL

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Summit County Fiscal Officer

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though fully rewritten in this Notice of Appeal. The Errors complained of are attached hereto as "Exhibit B", which is incorporated herein by reference.

Respectfully submitted,

SLEGGs, DANZINGER & GILL, CO., LPA



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SHARON L. BARKOFF, TRUSTEES

**OHIO BOARD OF TAX APPEALS**

Board of Education of the Akron City )  
School District, )  
 )  
Appellant, )  
 )  
vs. )  
 )  
Summit County Board of Revision, the )  
Summit County Fiscal Officer, and Rodger )  
L. Barkoff and Sharon L. Barkoff, Trustees, )  
 )  
Appellees. )

CASE NO. 2009-K-3018  
  
(REAL PROPERTY TAX)  
  
DECISION AND ORDER

**AUG 16 2012**

**APPEARANCES:**

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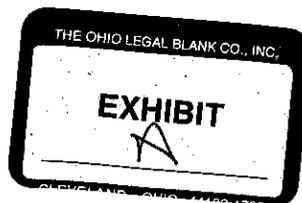
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Entered **AUG 14 2012**

Ms. Margulies, Mr. Johrendt, and Mr. Williamson concur.

Through its appeal, appellant challenges a decision issued by the Summit County Board of Revision ("BOR") in which it retained the fiscal officer's values of the subject property, i.e., parcel number 67-61048, for ad valorem tax purposes for tax year 2008. The parties agreed to waive hearing before this board. Accordingly, this matter is considered upon appellant's notice of appeal, the transcript certified by the BOR, and the written argument submitted by the parties.



T3924-1  
✓

For tax year 2008, the fiscal officer assessed the subject property, improved with a structure devoted to a retail restaurant use, i.e., Arby's, consistent with the following values:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$330,460	Land	\$115,660
Building	<u>\$571,860</u>	Building	<u>\$200,150</u>
Total	\$902,320	Total	\$315,810

Pursuant to R.C. 5715.19(A), appellant filed a complaint with the BOR requesting that the property's true and taxable values be increased to \$1,407,000 and \$492,450, respectively, because of a "Recent Sale of Property," citing to a sale that had taken place on August 11, 2005. In support of its complaint, appellant offered a conveyance fee statement and limited warranty deed reflecting appellant's purchase of the subject property for \$1,407,000. In opposition, counsel for the property owners argued that the sale was too remote due to changes in the market, offering in support of this position information relating to a July 1, 2008 sale of an Arby's restaurant in Lucas County and arguing that such transaction, effected as an "all cash" sale, suggested a change in the market and served to support the fiscal officer's assessed values. Thereafter, the BOR issued a decision retaining the fiscal officer's values.

From this decision, appellant appealed to this board, asserting value should be predicated upon the August 2005 sale amount. In appeals like the present one, where the presentation of additional evidence on appeal is waived, this board must independently review the evidence and render a value determination consistent with such information and not merely "rubber stamp" the finding from which the appeal is taken:

“The parties herein apparently waived presentation of further evidence and agreed that only the evidence presented to the BOR was to be considered by the BTA. The situation faced by the BTA in this case is analogous to that faced by the common pleas court in *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St. 3d 11 \*\*\*. The court in *Black* had before it an appeal from a board of revision under R.C. 5717.05, the alternative appeal provision to R.C. 5717.01. The only evidence before the common pleas court was the statutory transcript from the board of revision. We stated in *Black* that the common pleas court was not required to hold an evidentiary hearing or a trial *de novo*, but that the common pleas court ‘has a duty on appeal to independently weigh and evaluate all evidence properly before it. The court is then required to make an independent determination concerning the valuation of the property at issue. The court’s review of the evidence should be thorough and comprehensive, and should ensure that its final determination is more than a mere rubber stamping of the board of revision’s determination.’ *Id.* at 13-14 \*\*\*. Our conclusion in *Black* was that R.C. 5717.05 ‘contemplates a *decision de novo*.’ (Emphasis *sic.*) *Id.* at 14 \*\*\*.

“The duty of both the BTA and the common pleas court upon an appeal is to ‘determine the taxable value of the property.’ See R.C. 5717.03 and 5717.05. We find that the BTA in this case is required to meet the standard enunciated in *Black*. Thus, if the only evidence before the BTA is the statutory transcript from the board of revision, the BTA must make its own independent judgment based on its weighing of the evidence contained in that transcript.” *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15. (Parallel citations omitted.)

Further, “[w]hen cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision.” *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, 566.

R.C. 5713.03 recognizes the utility of a sale in establishing the value of real property for purposes of ad valorem taxation:

“The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon \*\*\*. In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot or parcel has been the subject of an arm’s length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. \*\*\*”

This statute reflects the General Assembly’s codification of *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, 412, in which the Supreme Court held that “[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. This, without question, will usually determine the monetary value of the property.” See, also, *Conalco Inc. v. Monroe Cty. Bd. of Revision* (1977), 50 Ohio St.2d 129, paragraph one of the syllabus (“The best evidence of the ‘true value in money’ of real property is an actual, recent sale of the property in an arm’s-length transaction.”); *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, at ¶16 (“Pursuant to R.C. 5713.03, the sale price in a recent arm’s-length transaction between a willing seller and a willing buyer shall be considered the true value of the property for taxation purposes.”).

In *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio-5932, the Supreme Court held that this board is justified in viewing evidence of transfer, such as that relied upon by appellant, i.e., a conveyance fee statement and limited warranty deed, as constituting a prima facie showing of value. With

the presentation of such evidence, “a rebuttable presumption exists that the sale has met all the requirements that characterize true value,” *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325, 327, and, typically, “the only rebuttal lies in challenging whether the elements of recency and arm’s-length character between a willing seller and a willing buyer are genuinely present for that particular sale.” *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. No one has suggested that the August 2005 sale was not an arm’s-length transaction and instead the point of contention lies in the element of recency.

We acknowledge that whether a sale is sufficiently “recent” to or too “remote” from tax lien date to qualify as the “best evidence” of value is not decided exclusively upon temporal proximity.<sup>1</sup> *Worthington City Schools Bd. of Edn.*, at ¶32. However, it remains the burden of a party contesting the utility of a sale to rebut the presumptions to be accorded it. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 129 Ohio St.3d 3, 2011-Ohio-2316. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325; *South Euclid-Lyndhurst City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (May 13, 2005), BTA No. 2003-G-1041, unreported, at 9. Based on the record before this board, we are unable to agree with the BOR’s decision to disregard the sale and maintain the fiscal officer’s values. Statements made by counsel on his clients’ behalf do not constitute evidence upon which our decision may be based. See, e.g., *Corporate Exchange Bldgs. IV & V, L.P. v. Franklin Cty. Bd. of Revision* (1998), 82 Ohio St.3d 297, 299. The

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<sup>1</sup> Evident from decisions announced by the Supreme Court of Ohio, sales which occur similarly distant in time from a tax lien date may serve as the basis for ad valorem valuation. See, e.g., *HK New Plan Exchange Property Owner II, L.L.C. v. Hamilton Cty. Bd. of Revision*, 122 Ohio St.3d 438, 2009-Ohio-3546 (value based upon sale occurring twenty-four months prior to tax lien date).

uncorroborated evidence of a cash-only transaction is not competent and probative evidence to support a finding that the market in which the subject is located had undergone either a sudden or significant change between the sale and tax lien dates. Nor are we persuaded that counsel's reference to a singular sale, located in a different area than the subject about which limited information is available, provides an adequate value indicator. Clearly counsel is not competent to engage in the type of valuation analysis commonly employed by an expert appraiser. See, generally, *The Appraisal of Real Estate* (13<sup>th</sup> Ed. 2008), at 8-10 (distinguishing appraisers from persons who may be involved in and familiar with various issues attendant to the valuation of real estate market); *1524 Indianola Ave. LLC v. Franklin Cty. Bd. of Revision* (Oct. 12, 2007), BTA Nos. 2005-T-1605, et al., unreported.

Having found no basis for rejecting the August 2005 sale, we find the best evidence of the subject's value, as of the effective tax lien date, i.e., January 1, 2008, to be the amount for which it transferred on August 11, 2005, allocated<sup>2</sup> as follows:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 520,590	Land	\$182,210
Building	<u>\$ 886,410</u>	Building	<u>\$310,240</u>
Total	\$1,407,000	Total	\$492,450

It is therefore the order of this board that the Summit County Fiscal Officer list and assess the subject property in conformity with the decision as announced herein.

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<sup>2</sup> In the absence of information which would allow for a more accurate allocation of the sale price between the land and improvements thereon, we have utilized the percentages reflected by the auditor's original assessment of the property. Cf. *FirstCal Industrial 2 Acquisition LLC v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921, at ¶31.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.

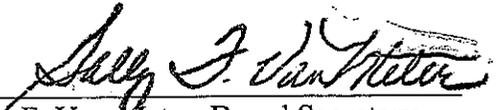
  
Sally F. Van Meter, Board Secretary

EXHIBIT "B"

ASSIGNMENT OF ERRORS

ASSIGNMENT OF ERROR NO. 1

The Board of Tax Appeals decision and order using a sale that occurred 28 months prior to the tax lien date to determine value when no evidence was submitted to show that the sale was "recent" is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 2

The Board of Tax Appeals decision and order adopting the use of a sale rejected by the local fiscal officer and board of revision when no evidence is introduced to show that their decisions were wrong is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 3

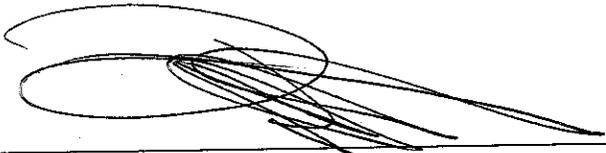
The Board of Tax Appeals decision and order shifting the burden of proof on the issue of recentness to non-appealing parties is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 4

The Board of Tax Appeals decision and order to reject Appellant's evidence on the issue of value is unreasonable and unlawful.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing NOTICE OF APPEAL was mailed via Certified United States Mail, postage prepaid, to Regina VanVorous, Esq., Assistant Prosecuting Attorney, 53 University Avenue, 7<sup>th</sup> Floor, Akron, OH 44308, attorney for Appellees, Summit County Board of Revision and Summit County Fiscal Officer; David H. Seed, Esq., Brindza, McIntyre & Seed, LLP, 1111 Superior Avenue, Suite 1025, Cleveland, OH 44114, Attorney for Appellee Board of Education of the Akron City School District; and Mike DeWine, Ohio Attorney General, State Office Tower, 17th Floor, 30 East Broad Street, Columbus, OH 43215-3428, Attorney for Appellee Tax Commissioner of the State of Ohio on this 11<sup>th</sup> day of September, 2012.



\_\_\_\_\_  
Todd W. Sleggs