ORIGINAL

Case No. _____ 12-2107

Supreme Court of the State of Ohio

SQUIRE HILL PROPERTIES II, LLC,

Appellant,

v.

WARREN COUNTY BOARD OF REVISION,

WARREN COUNTY AUDITOR,

BOARD OF EDUCATION OF THE MASON CITY SCHOOL DISTRICT, and

JOSEPH W. TESTA, in his official capacity as Ohio Tax Commissioner,

Appellees.

APPEAL OF RIGHT FROM THE
OHIO BOARD OF TAX APPEAL
CASE NO. 2009-K-2364

NOTICE OF APPEAL OF SQUIRE HILL PROPERTIES II, LLC

APPEAL FROM BOARD OF TAX APPEALS

FILED
DEC 17 2012
CLERK OF COURT
SUPREME COURT OF OHIO

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Counsel for Appellee Joseph W. Testa, Ohio Tax Commissioner

NOTICE OF APPEAL

Appellant, Squire Hill Properties II, LLC, as the person in whose name the subject property is listed or sought to be listed, *i.e.*, parcel numbers 16334760011 and 16334760012 in Warren County, Ohio, hereby gives notice of its appeal as of right, pursuant to R.C. § 5717.04, to the Supreme Court of Ohio from a Decision and Order of the Ohio Board of Tax Appeals, journalized in Case No. 2009-K-2364, on November 16, 2012. A true copy of the Decision and Order of the Board being appealed is attached hereto and incorporated herein by reference.

The appellant complains of the following errors in the Decision and Order of the Board of Tax Appeals:

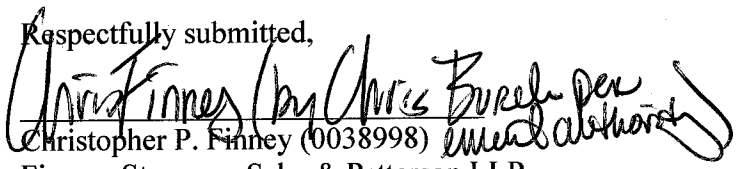
1. It was error for Board of Tax Appeals to fail to sustain the finding of the Warren County Board of Revision to value the property at, respectively, $3,322,790 (Parcel 16334760012) and $31,110 (Parcel 16334760011) and instead to increase it to, respectively, $5,317,900 and (Parcel 16334760012) and $32,100 (Parcel 16334760011).

2. It was an error for the Board of Tax Appeals to conclude that, under the facts and circumstances in this case, a sale within 12 1/2 months of the tax lien date of January 1, 2008 is not dispositive as to the value of the subject property pursuant to R.C. §5713.03.

3. Appellant, failing to introduce any evidence at the Board of Tax Appeals, failed to meet its burden of proof to overcome the record established at the Warren County Board of Revision.

4. The Appellant was denied due process in not being provided constitutionally required notice and opportunity to be heard.

Respectfully submitted,



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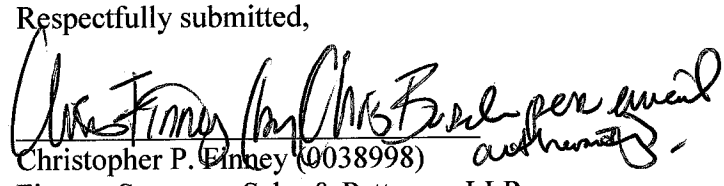
PROOF OF SERVICE UPON OHIO BOARD OF TAX APPEALS

This is to certify that the Notice of Appeal of Squire Hill Properties II, LLC, was filed with the Ohio Board of Tax Appeals, State Office Tower, 24th Floor, 30 East Broad Street, Columbus, Ohio, as evidenced by its date stamp as set forth hereon.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that on this 17th day of December 2012, a copy of the Notice of Appeal and a copy of the Demand to Certify Transcript were sent via certified mail to:.

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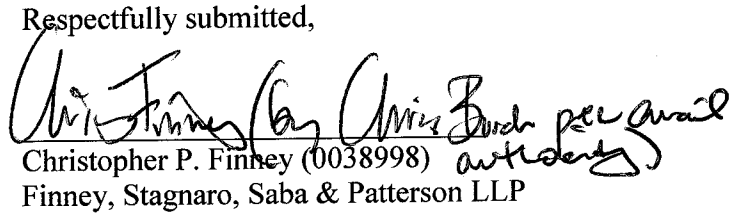
Counsel for Appellee Joseph W. Testa,
Ohio Tax Commissioner

Respectfully submitted,



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Squire Hill Properties II, LLC

OHIO BOARD OF TAX APPEALS

Mason City School District, Board of Education,	)	CASE NO. 2009-K-2364
Appellant,	)	(REAL PROPERTY TAX)
vs.	)	DECISION AND ORDER
Warren County Board of Revision, Warren County Auditor, and Wasserpach IV, LLC,	)	
Appellees.	)	

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NICK NELSON
WARREN COUNTY AUDITOR
LEBANON, OHIO

APPEARANCES:

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Entered NOV 16 2012

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

Through its appeal, appellant challenges a decision issued by the Warren County Board of Revision ("BOR") in reducing the values of the subject property, i.e., parcel numbers 16334760011 and 16334760012, from that originally established by the Warren County Auditor ("auditor") for ad valorem tax purposes for tax year 2008. We proceed to consider this matter upon appellant's notice of appeal, the transcript certified to this board by the BOR, and the record of this board's hearing at which only appellant was represented.

The subject property, a one-story, multi-tenant strip center, had been assessed by the auditor as of tax lien date, i.e., January 1, 2008, at a total true value of $5,066,900, allocated as follows:

Parcel No. 16334760011

	TRUE VALUE		TAXABLE VALUE
Land	$31,110	Land	$10,890
Building	$ -0-	Building	$ -0-
Total	$31,110	Total	$10,890

Parcel No. 16334760012

	TRUE VALUE		TAXABLE VALUE
Land	$1,038,390	Land	$ 363,440
Building	$3,997,400	Building	$1,399,090
Total	$5,035,790	Total	$1,762,530

The appellee property owner, Wasserpach IV, LLC, filed a complaint with the BOR requesting a decrease in the subject's total true value to $3,031,110, citing to a "[r]eduction in fair market value of property due to decreased profitability resulting from decreased market rents, large vacancies, lower rental income, and increased property expenses." On its complaint, Wasserpach disclosed that the property sold for $5,350,000 on December 15, 2006. In response, appellant filed a countercomplaint, also referencing the sale 12½ months prior to tax lien date, but rather than requesting an increase to the sale price, it asked that the auditor's values be retained. At the BOR hearing, Wasserpach presented the written appraisal and testimony of its appraiser, Gene F. Manion, who opined that a leased fee interest in the subject property had a value of $2,942,000 as of January 1, 2008. During his testimony, he indicated that while the property was fully occupied at the time of the December 2006 sale, by the tax lien date, the property's vacancy rate exceeded 50%. No documents evidencing the December 2006 sale were submitted, e.g., deed, conveyance fee statement, purchase agreement, nor did anyone involved with the transaction testify before the BOR. Although appellant argued that property subject to

leasehold interests is routinely subject to fluctuations in occupancy, the BOR concluded a reduction was warranted, resulting in its decision to reduce the total true value of the property to $3,353,900:

Parcel No. 16334760011

	TRUE VALUE		TAXABLE VALUE
Land	$31,110	Land	$10,890
Building	$ -0-	Building	$ -0-
Total	$31,110	Total	$10,890

Parcel No. 16334760012

	TRUE VALUE		TAXABLE VALUE
Land	$1,038,390	Land	$ 363,440
Building	$2,284,400	Building	$ 799,540
Total	$3,322,790	Total	$1,162,980

From this decision, appellant appealed to this board, with only appellant's counsel being present at hearing.[1] She offered no evidence and instead argued that the BOR erred in reducing the subject's value since it had transferred less than 13 months prior to tax lien date for more than the amount at which it had been assessed by the auditor. Counsel also insisted that any reliance upon Wasserpach's appraisal was misplaced since it expressed a value opinion for a leased fee in which only an income approach was employed, itself based exclusively upon the subject's 2009 income stream. While citing to legal authority supporting the proposition that the best evidence of a property's value is the amount for which it transfers in an arm's-length transaction recent to tax lien date, counsel again did not advocate an increase to the December 2006 sale price, but instead sought a return to the auditor's assessed values.

[1] Shortly after the issuance of this board's scheduling notice, counsel for the county appellees advised this board his clients' intent to waive appearance at hearing. The day prior to hearing, counsel for Wasserpach advised this board that he would not be in attendance as Wasserpach no longer owns the subject property.

Given the references to a sale, we acknowledge that R.C. §713.03 provides that when establishing the value of real property for purposes of ad valorem taxation, "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." See, also, *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, 412 ("The 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."); *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979.

The Supreme Court has held that "[t]he troika of deed, conveyance-fee statement, and purchase agreement form[s] an adequate basis for the BTA to find a recent arm's-length sale, subject to rebuttal[.]" *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio-5932, at ¶28. 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.

While documentation of the type described above was not presented to either the BOR or this board, all of the parties acknowledge the existence of the December 2006 sale, confirmed by the auditor's property record card. From all indications, such sale appears to be

arm's length and recent to tax lien date.[2] In the absence of evidence demonstrating why such sale should not be relied upon to establish the subject property's value for tax purposes, we will not engage in conjecture as to bases for its rejection. See, generally, *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059, at ¶26 ("Mere speculation is not evidence."); *Jenkins v. Summit Cty. Bd. of Revision* (Feb. 14, 2012), 2009-Y-735, unreported (accepting testimony and property record as sufficient basis upon which to confirm the existence of a sale and the amount for which it transferred). Given the fact that the property transferred in an arm's-length transaction which is recent to the applicable tax lien date, we need not consider the utility of the alternative opinion evidence of value offered by Wasserpach. See, e.g., *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62, 64 ("It is only when the purchase price does not reflect the true value that a review of independent appraisals based upon other factors is appropriate.").

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[2] Whether a sale is sufficiently "recent" to or "remote" from a particular tax lien date to qualify as the "best evidence" of value is not decided exclusively upon temporal proximity. *Worthington City Schools Bd. of Edn.*, supra, at ¶32. Nevertheless, it remains the burden of a party contesting the utility of a sale to rebut the presumptions to be accorded it. See, e.g., *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. Evident from numerous Supreme Court decisions, the mere passage of twelve months between sale and tax lien date is not sufficient cause to disregard a sale. 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); *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059 (reversing this board's decision and ordering that the property's taxable value as of January 1, 2002 be based upon its sale which occurred in October 2003, twenty-two months after tax lien date); *Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 107 Ohio St.3d 250, 2005-Ohio-6434 (valued based on sale occurring twelve months after tax lien date); *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62 (value based upon sale occurring thirteen months after tax lien date); *Reynoldsburg Bd. of Edn. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 543 (value based upon sale occurring five months after tax lien date); *Zazworsky v. Licking Cty. Bd. of Revision* (1991), 61 Ohio St.3d 604 (value based upon sale occurring fifteen months after tax lien date); *W.S. Tyler Co. v. Lake Cty. Bd. of Revision* (1990), 57 Ohio St.3d 47 (value based upon sale occurring eleven months after tax lien date); *Hilliard City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1990), 53 Ohio St.3d 57 (value based upon sale occurring twelve months after tax lien date).

Accordingly, we find the best evidence of the subject's value as of January 1, 2008, to be the amount for which it transferred in December 2006, i.e., $5,350,000, allocated and rounded[3] as follows:

BASE VALUE

Parcel No. 16334760011

	TRUE VALUE			TAXABLE VALUE	
Land	~~$32,100~~	$31,110	Land	~~$11,240~~	10,890
Building	$ -0-	0	Building	$ -0-	
Total	~~$32,100~~	$31,110	Total	~~$11,240~~	10,890

Parcel No. 16334760012

	TRUE VALUE			TAXABLE VALUE
Land	~~$1,096,750~~	$1,038,390	Land	$ 383,860
Building	$4,221,150	4,280,500	Building	$1,477,400
Total	$5,317,900	5,318,890	Total	$1,861,260

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

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JACK NELSON
WARREN COUNTY AUDITOR
LEBANON, OHIO

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

Sally F. Van Meter, Board Secretary

[3] In the absence of information which would allow for a more accurate allocation of the sale price among parcels and 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 ("Although not rising to the level of a presumptively correct valuation, pursuant to *Colonial Village*, [*Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975,] the auditor's initial determination of value for a given tax year possesses an increment of prima-facie probative force, and the percentages derived from those valuations are 'corroborating' in the absence of better evidence. As a result, the proportion of each parcel's assigned value to the aggregate value of the parcels possesses the same increment of prima facie probative force.").