

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: 2012-1542

BOARD OF TAX APPEALS
CASE NO. 2009-K-3018



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STATEMENT OF THE CASE

This is a 2008 real property tax year appeal that was initiated by the Appellee Akron City School District Board of Education (hereinafter "Appellee"). The tax year 2008 was a reappraisal year in Summit County under R.C. 5715.24 and 5715.33. The Summit County Fiscal Officer, under R.C. 5713.01 and 5713.03, valued the property at \$902,310 as of January 1, 2008.

In its complaint, the Appellee sought to have an August 11, 2005 sale used to assess the property as of January 1, 2008. (Supp at page 1.) The Appellee property owner objected to the Appellant's requested increase for the reason that the sale, 29 months prior to the tax lien date of January 1, 2008, was not recent for purposes of R.C. 5713.01 and R.C. 5713.03. (Supp at page 11.) See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, BTA Case No. 80-C-176, decided 2/10/83, slip op. (Appendix at page 34-39; Supp at page 12-17.) The property owner also submitted documentation of a recent sale on July 1, 2008 of an Arby's restaurant (the subject property was an Arby's restaurant on January 1, 2008) in Lucas County, Ohio that sold for \$243/sq. ft., very close to the Summit County Fiscal Officer's value of \$255/sq. ft. in this appeal. (Supp. at page 20-43.)

The Appellee did not discuss the issue of the recentness of the sale at the hearing before the Board of Revision. The Appellee did not submit any evidence or testimony on the issue of whether the sale was a recent sale for purposes of the January 1, 2008 valuation date in its complaint. The Summit County Board of Revision did not grant the Appellee's request to value the property based on the 2005 sale of property and the Appellee appealed that decision to the Ohio Board of Tax Appeals. (Appendix at page 21; Supp. at page 44.)

In its appeal to the Ohio Board of Tax Appeals, the Appellee did not submit any evidence in support of its appeal of the Board of Revision decision. The Appellee waived its appearance at the merit hearing scheduled before the Ohio Board of Tax Appeals (Supp. at page 45) and did not file a brief in its appeal. Counsel for the Appellee sent a letter to the hearing examiner suggesting that the burden of proof in the appeal was on other parties in the case to show a “change of market conditions or changes . . . to the property.” (Supp. art page 46.) In fact, the burden of proof was on the Appellee as the appealing party to show that the sale was recent with respect to the valuation date of January 1, 2008.

The record in this appeal shows that the Appellee failed to submit any evidence to support its claim that the sale is recent and probative of the value of the property as of January 1, 2008. The Summit County Fiscal Officer did not use the sale, the Board of Revision did not use the sale, and the Board of Tax Appeals had no evidence on the issue of recentness. The Appellee failed to meet its burden of proof in its appeal.

Despite the lack of any evidence in the case, the Ohio Board of Tax Appeals utilized the 2005 sale to assess the property as of January 1, 2008. The Board of Tax Appeals Decision and Order is unreasonable and unlawful.

LAW AND ARGUMENT

PROPOSITION OF LAW NO. I

WHEN AN ASSESSMENT IS MADE UNDER R. C. 5713.03 THAT DOES NOT USE A SALE SEVERAL YEARS FROM THE ASSESSMENT DATE, IT IS THE COMPLAINING PARTY’S BURDEN TO SHOW THAT THE SALE IS RECENT.

This proposition of law addresses the following assignments of error:

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.

R.C. 5713.03 provides:

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.¹

The Summit County Fiscal Officer determined the value of Appellant’s property for the 2008 reappraisal in Summit County well after the August 2005 sale of the property. The tax

¹ The statute was recently amended to change “shall” to “may”. The amendment was not effective for the assessment date in this appeal. Appendix at pages 26 and 27.

duplicate for the tax year 2008 would have been due by the first day of October in 2008. R.C. 319.28. The Fiscal Officer would have been aware of the sale and would have made a determination whether the sale as “within a reasonable length of time either before or after the tax lien date.” See R.C. 5713.03. That determination should not be disturbed without evidence. No evidence contradicting that determination has been submitted in this case. The Board of Tax Appeals’ finding that the sale is recent is not supported in the record in this appeal, it is unreasonable and unlawful. This is particularly true since the Summit County Fiscal Officer in this appeal was performing a sexennial reappraisal for tax year 2008 under R.C. 5715.24 and R.C. 5715.33. The tax year 2008 was not an interim year where a determination by the Summit County Fiscal Officer was merely being carried over to subsequent years until the next reappraisal. See the discussion of the *Worthington* case, infra. The 2008 tax year determination would also have been reviewed by the Tax Commissioner to ensure that the property was assessed in compliance with R.C. 5713.03. See R.C. 5715.24. Neither the Summit County Fiscal Officer, nor any other party in an appeal, should be required to show that the Fiscal Officer followed R.C. 5713.03. It was the Appellee’s burden before the Summit County Board of Revision to show that the sale was recent and that the Summit County Fiscal Officer had erred in failing to use the sale in conducting the 2008 reappraisal in the County under R.C. 5715.24 and R.C. 5715.33. The Appellee did not submit any evidence to meet this burden. The Board of Tax Appeals’ failure to recognize this is unreasonable and unlawful.

The Summit County Board of Revision reviewed the same sale that the Summit County Fiscal Officer chose not to use in conducting the 2008 reappraisal in the County and retained the

Summit County Auditor's assessment of the property. No evidence showing that the Board of Revision's determination was wrong has been submitted in this case. Yet, at page 5 in its decision and order, the Board of Tax Appeals states that "it remains the burden of a party contesting the utility of a sale to rebut the presumptions to be accorded it." Appendix at page 9. This statement ignores the fact that the Summit County Fiscal Officer, Tax Commissioner, and Board of Revision had already rejected the use of the sale for assessing the property as of January 1, 2008. And with no evidence in the record, the Board of Tax Appeals goes on to find that "we are unable to agree with the BOR's decision to disregard the sale and maintain the fiscal officer's values". See Board of Tax Appeals Decision and Order at page 5, Appendix at page 9. Based on what? The Appellee did not submit any evidence in its appeal to the Board of Tax Appeals or before the Board of Revision to show that the Summit County Fiscal Officer acted improperly in conducting the 2008 reappraisal under R.C. 5715.24 and R.C. 5715.33. No violation of R. C. 5713.03 has been shown by the Appellee, the Board of Tax Appeals finding to the contrary is not supported by any evidence in this case.

The Board of Tax Appeals' Decision and Order shifting the burden in this appeal to non-appealing parties is unreasonable and unlawful. The Appellee failed to meet their burden of proof before the Board of Revision, did not submit any evidence on appeal, and did not even argue that the sale was recent. The only evidence in the appeal on what properties comparable to the subject property (here Arby's restaurants) were selling for is the Appellant's evidence. (Supp. at page 10-43.) This evidence supported the Summit County Fiscal Officer's decision not

to use the 2005 sale, the Board of Tax Appeals' Decision and Order to reject this evidence is unreasonable and unlawful.

Since the Summit County Fiscal Officer had the 2005 sale in its records when it reappraised the property for the tax year 2008, the burden was on the Appellee to show why the Fiscal Officer erred in not using the sale for the 2008 reappraisal. The Appellee did not submit any evidence at the Board of Revision hearing, waived its appearance at the Board of Tax Appeals hearing, and did not submit any evidence to show that the August 2005 sale, 28-29 months prior to the tax lien date, was recent for purposes of the 2008 reappraisal. If contesting the Fiscal Officer's decision (reviewed and approved by the Tax Commissioner and Board of Revision) not to use the sale is really as easy as the Board of Tax Appeals decision makes it, then all parties with rights under R.C. 5715.19 should file assessment complaints whenever an assessment does not match a sale price, no matter how remote the sale, they apparently bear no burden on the issue of recency. This is an absurd result that gives absolutely no deference to the duty imposed on the County Fiscal Officer under R.C. 5715.24, R.C. 5715.33, R.C. 5715.34, R.C. 5713.01 and R.C. 5713.03.

At the bottom of page 3 in its Decision and Order, the Board of Tax Appeals recognizes the burden of proof placed on an appellant from a board of revision (here the Appellee bore the burden of proof since the Board of Revision upheld the Summit County Fiscal Officer's assessment). Appendix at page 16. Then, even though no evidence was submitted by the Appellee on the issue of recency, at the bottom of page 4 and page 5 in its Decision and Order,

the Board of Tax Appeals shifts the burden of proof on the issue of recency to the non-appealing parties in the case. Appendix at page 17-18. This is unreasonable and unlawful.

Even though the Fiscal Officer considered and rejected the use of the August 2005 sale in its 2008 reappraisal, and the Board of Revision upheld this rejection, the Board of Tax Appeals states that: “[b]ased 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 value”. Board of Tax Appeals Decision and Order at page 5, Appendix at page 18. There is no evidence in the record to support such a finding, the Board of Tax Appeals Decision and Order is unreasonable.

Both the Appellee in its letter to the hearing examiner in this case (Supp. at page 46) and the Board of Tax Appeals cite *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 129 Ohio St.3d 3, 2011-Ohio-2316 (hereinafter “*Worthington*”). This case does not support the Board of Tax Appeals Decision and Order.

The *Worthington* case involved the tax years 2004 and 2005 in Franklin County, Ohio. The case originated from a 2004 tax year complaint filed by the Board of Education. The last reappraisal in Franklin County in that case was 1999 and 2002 was an update year under R.C. 5715.24 and R.C. 5715.33. As a result, the value being contested in that appeal had originally been established by the Franklin County Auditor in 1990, and updated in 2002, which carried over to the tax year 2004.² The Franklin County Auditor was not under any duty under R.C.

² Because the tax year 2005 had already been assessed under R.C. 319.28 at the time of the Board of Revision hearing, the Board of Revision included the tax year 2005 in its decision under R.C. 5715.19(D)

5715.24 and R.C. 5715.33 to determine a value of the tax year 2004 and as a result the County Auditor (and Tax Commissioner) would not have had an opportunity to consider the May 2003 sale at issue in that appeal as part of its 1999 reappraisal or 2002 update values for the property. Those are not the facts in this appeal and the holding in that case does not apply in this appeal.

The other case cited by the Appellee is *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (2005), 106 Ohio St. 3d 269. That case involved a 1997 tax year appeal out of Cuyahoga County, Ohio, and did not involve this issue of recency. The sale occurred March 1996 and the tax year 1997 was an update year under R.C. 5715.24 and R.C. 5715.33, not a reappraisal year. Those are not the facts in this appeal and the holding in that case does not apply in this appeal.

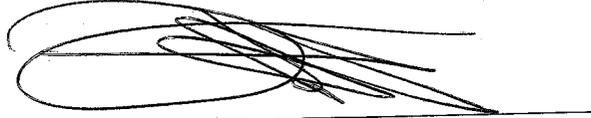
In sum, if the Appellee wanted to contest the 2008 reappraisal value by the Summit County Fiscal Officer based upon a sale that had already been considered and rejected by the Summit County Fiscal Officer, Tax Commissioner and Board of Revision, the Appellee was required to do more than send a one-page letter to the Board of Tax Appeals Hearing Examiner.

CONCLUSION

For the foregoing reasons, the Appellant Rodger L. Barkoff and Sharon L. Barkoff, Trustees, respectfully requests that this Court reverse the decision and order of the Ohio Board of Tax Appeals and remand the case to the Ohio Board of Tax Appeals with instructions to find the fair market value or true value in money of the real property to be the value of \$902,320

determined by the Summit County Fiscal Officer and Summit County Board of Revision because no evidence contradicting that determination has been presented in this case.

Respectfully submitted,

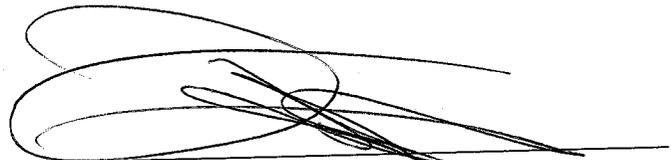


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A copy of the foregoing Brief of Appellant Rodger L. Barkoff and Sharon L. Barkoff, Trustees, was mailed via regular U.S. mail postage prepaid, this 19th day of March, 2013 to the following: Regina VanVorous, Assistant Prosecuting Attorney, 353 University Avenue, 7th Floor, Akron, OH 44308, Attorney for Appellees Summit County Board of Revision and Franklin County Fiscal Officer; David H. Seed, Esq., Brindza, McIntyre & Seed, LLP, 1111 Superior Avenue, Suite 1025, Cleveland, OH 44114, Attorneys 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, Ohio 43215-3428, Attorney for Appellee Tax Commissioner of the State of Ohio.


Todd W. Sleggs

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APPEAL FROM THE BOARD OF TAX APPEALS

Board of Education of the Akron
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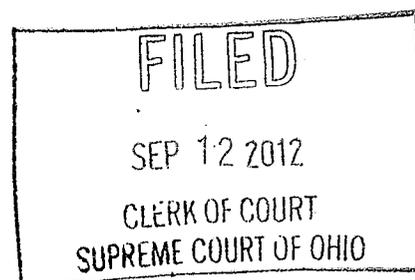
NOTICE OF APPEAL

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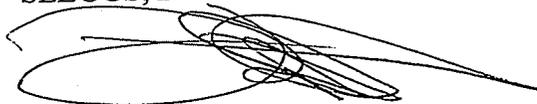
NOTICE OF APPEAL TO THE
SUPREME COURT OF OHIO
PURSUANT TO SECTION
5717.04 REVISED CODE

The Appellant, Rodger L. Barkoff and Sharon L. Barkoff, Trustees, by and through counsel, hereby gives notice of its appeal to the Supreme Court of The State of Ohio, from a Decision and Order of the Ohio Board of Tax Appeals, rendered on the 14th day of August, 2012, a copy of which is attached hereto as "Exhibit A" and which is incorporated herein as

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,

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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.)
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(REAL PROPERTY TAX)
DECISION AND ORDER
AUG 16 2012

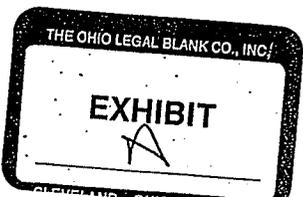
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Entered AUG 14 2012

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.



-5- T3401k

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	\$571,860	Building	\$200,150
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.¹ *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

¹ 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* (13th 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, allocated² as follows:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 520,590	Land	\$182,210
Building	\$ 886,410	Building	\$310,240
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.

² 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

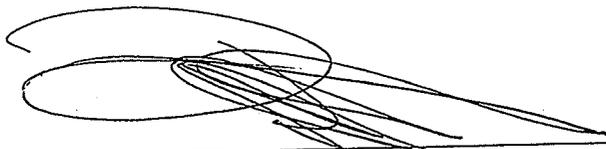
The Board of Tax Appeals decision and order shifting the burden of proof on the issue of recentness to non-appealing parties is unreasonable and unlawful.

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, 7th 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 11th day of September, 2012.



Todd W. Sleggs

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:

- For the Appellant - Brindza, McIntyre & Seed, LLP
David H. Seed
1111 Superior Avenue, Suite 1025
Cleveland, Ohio 44114
- For the County Appellees - Sherri Bevan Walsh
Summit County Prosecuting Attorney
Regina VanVorous
Assistant Prosecuting Attorney
53 University Avenue, 7th Floor
Akron, Ohio 44308
- For the Appellee Property Owner - Sleggs, Danzinger & Gill Co., LPA
Todd W. Sleggs
820 West Superior Avenue, 7th Floor
Cleveland, Ohio 44113

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.

T2924-0

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	\$571,860	Building	\$200,150
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

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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* (13th 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.

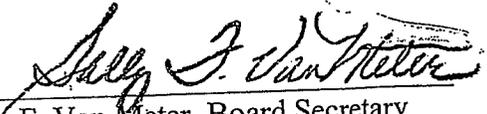
Having found no basis for rejecting the August 2005 sale, we find the best evidence of the subject's value, as of the effective tax lien date, i.e., January 1, 2008, to be the amount for which it transferred on August 11, 2005, allocated² as follows:

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 520,590	Land	\$182,210
Building	\$ 886,410	Building	\$310,240
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.

² 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

**COUNTY OF SUMMIT
BOARD OF REVISION**



JOHN A. DONOFRIO, Fiscal Officer
Secretary

RUSSELL M. PRY, Executive
Member

DANIEL M. HORRIGAN, Clerk of Courts
Member

Date: September 18, 2009

Notice 5715.19 O.R.C.

BOR No.: 08-2817, 08-2817A
Property Owner: Barkoff, Rodger & Sharon
Complainant's Agent:
Parcel No.: 67-61048
Complainant, other than Owner: Akron City School District Board of Education

Upon investigation of the above numbered complaint, in accordance with the laws of the State of Ohio and the testimony and evidence given at your hearing, the Board finds the Market Value of subject property is as follows:

No Change		To:
From:	Land 330,460	Land
	Bldg 571,860	Bldg
	Total 902,320	Total

The Fiscal Officer is hereby directed to correct his records and duplicate in accordance with this finding. It is further ordered that the secretary transmit to the complainant by mail a copy of said order.

Certified mail receipt #:
Owner: 91 7108 2133 3936 3961 6821
Complainant's Agent:
Complainant other than owner: 91 7108 2133 3936 3961 6838
Other:

2525 State Road • Cuyahoga Falls, Ohio 44223
330-926-2559 • Fax 330-926-2498

EXHIBIT A



Ohio Statutes
 Title 3. COUNTIES
 Chapter 319. AUDITOR

Includes all legislation filed with the Secretary of State's Office through 12/26/2012

§ 319.28. General tax list and general duplicate of real and public utility property compiled – parcel numbering system

- (A) Except as otherwise provided in division (B) of this section, on or before the first Monday of August, annually, the county auditor shall compile and make up a general tax list of real and public utility property in the county, either in tabular form and alphabetical order, or, with the consent of the county treasurer, by listing all parcels in a permanent parcel number sequence to which a separate alphabetical index is keyed, containing the names of the several persons, companies, firms, partnerships, associations, and corporations in whose names real property has been listed in each township, municipal corporation, special district, or separate school district, or part of either in the auditor's county, placing separately, in appropriate columns opposite each name, the description of each tract, lot, or parcel of real estate, the value of each tract, lot, or parcel, the value of the improvements thereon, and of the names of the several public utilities whose property, subject to taxation on the general tax list and duplicate, has been apportioned by the department of taxation to the county, and the amount so apportioned to each township, municipal corporation, special district, or separate school district or part of either in the auditor's county, as shown by the certificates of apportionment of public utility property. If the name of the owner of any tract, lot, or parcel of real estate is unknown to the auditor, "unknown" shall be entered in the column of names opposite said tract, lot, or parcel. Such lists shall be prepared in duplicate. On or before the first Monday of September in each year, the auditor shall correct such lists in accordance with the additions and deductions ordered by the tax commissioner and by the county board of revision, and shall certify and on the first day of October deliver one copy thereof to the county treasurer. The copies prepared by the auditor shall constitute the auditor's general tax list and treasurer's general duplicate of real and public utility property for the current year. Once a permanent parcel numbering system has been established in any county as provided by the preceding paragraph, such system shall remain in effect until otherwise agreed upon by the county auditor and county treasurer.
- (B) (1) A peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation may submit a written request by affidavit to the county auditor requesting the county auditor to remove the name of the peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation from any record made available to the general public on the internet or a publicly accessible database and the general tax list of real and public utility property and the general duplicate of real and public utility property and insert the initials of the peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation on any record made available to the general public on the internet or a publicly accessible database and the general tax list of real and public utility property and the general duplicate of real and public utility property as the name of the peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation that appears on the deed.
- (2) Upon receiving a written request by affidavit described in division (B)(1) of this section, the county auditor shall act within five business days in accordance with the request to remove the name of the peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation from any record made available to the general public on the internet or a publicly accessible database and the general tax list of real and public utility property and the general duplicate of real and public utility property and insert initials of the peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation on any record made available to the general public on the internet or a publicly accessible database and the general tax list of real and public utility property and the general

duplicate of real and public utility property, if practicable. If the removal and insertion is not practicable, the county auditor shall verbally or in writing within five business days after receiving the written request explain to the peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation why the removal and insertion is impracticable.

Cite as R.C. § 319.28

History. Amended by 128th General Assembly File No. 9, HB 1, §101.01, eff. 10/16/2009.

Effective Date: 09-27-1983; 2008 HB46 09-01-2008

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Ohio Statutes
 Title 57. TAXATION
 Chapter 5713. ASSESSING REAL ESTATE

Includes all legislation filed with the Secretary of State's Office through 12/26/2012

§ 5713.01. County auditor shall be assessor – assessment procedure – employees

- (A) Each county shall be the unit for assessing real estate for taxation purposes. The county auditor shall be the assessor of all the real estate in the auditor's county for purposes of taxation, but this section does not affect the power conferred by Chapter 5727. of the Revised Code upon the tax commissioner regarding the valuation and assessment of real property used in railroad operations.
- (B) The auditor shall assess all the real estate situated in the county at its taxable value in accordance with sections 5713.03, 5713.31, and 5715.01 of the Revised Code and with the rules and methods applicable to the auditor's county adopted, prescribed, and promulgated by the tax commissioner. The auditor shall view and appraise or cause to be viewed and appraised at its true value in money, each lot or parcel of real estate, including land devoted exclusively to agricultural use, and the improvements located thereon at least once in each six-year period and the taxable values required to be derived therefrom shall be placed on the auditor's tax list and the county treasurer's duplicate for the tax year ordered by the commissioner pursuant to section 5715.34 of the Revised Code. The commissioner may grant an extension of one year or less if the commissioner finds that good cause exists for the extension. When the auditor so views and appraises, the auditor may enter each structure located thereon to determine by actual view what improvements have been made therein or additions made thereto since the next preceding valuation. The auditor shall revalue and assess at any time all or any part of the real estate in such county, including land devoted exclusively to agricultural use, where the auditor finds that the true or taxable values thereof have changed, and when a conservation easement is created under sections 5301.67 to 5301.70 of the Revised Code. The auditor may increase or decrease the true or taxable value of any lot or parcel of real estate in any township, municipal corporation, or other taxing district by an amount which will cause all real property on the tax list to be valued as required by law, or the auditor may increase or decrease the aggregate value of all real property, or any class of real property, in the county, township, municipal corporation, or other taxing district, or in any ward or other division of a municipal corporation by a per cent or amount which will cause all property to be properly valued and assessed for taxation in accordance with Section 36, Article II, Section 2, Article XII, Ohio Constitution, this section, and sections 5713.03, 5713.31, and 5715.01 of the Revised Code.
- (C) When the auditor determines to reappraise all the real estate in the county or any class thereof, when the tax commissioner orders an increase in the aggregate true or taxable value of the real estate in any taxing subdivision, or when the taxable value of real estate is increased by the application of a uniform taxable value per cent of true value pursuant to the order of the commissioner, the auditor shall advertise the completion of the reappraisal or equalization action in a newspaper of general circulation in the county once a week for the three consecutive weeks next preceding the issuance of the tax bills, or as provided in section 7.16 of the Revised Code for the two consecutive weeks next preceding the issuance of the tax bills. When the auditor changes the true or taxable value of any individual parcels of real estate, the auditor shall notify the owner of the real estate, or the person in whose name the same stands charged on the duplicate, by mail or in person, of the changes the auditor has made in the assessments of such property. Such notice shall be given at least thirty days prior to the issuance of the tax bills. Failure to receive notice shall not invalidate any proceeding under this section.
- (D) The auditor shall make the necessary abstracts from books of the auditor's office containing descriptions of real estate in such county, together with such platbooks and lists of transfers of title to land as the auditor deems necessary in the performance of the auditor's duties in valuing such property for taxation. Such abstracts, platbooks, and lists shall be in such form and detail as the tax commissioner prescribes.
- (E) The auditor, with the approval of the tax commissioner, may appoint and employ such experts, deputies, clerks, or other employees as the auditor deems necessary to the performance of the auditor's duties as assessor, or, with the approval of the tax commissioner, the auditor may enter into a contract with an individual, partnership, firm, company, or corporation to do all or any part of the work; the amount to be expended in the payment of the compensation of such employees shall be fixed by the board of county commissioners. If, in the opinion of the auditor, the board of county commissioners fails to provide a sufficient amount for the compensation of such employees, the auditor may apply to the tax commissioner for an additional allowance, and the additional amount

of compensation allowed by the commissioner shall be certified to the board of county commissioners, and the same shall be final. The salaries and compensation of such experts, deputies, clerks, and employees shall be paid upon the warrant of the auditor out of the general fund or the real estate assessment fund of the county, or both. If the salaries and compensation are in whole or in part fixed by the commissioner, they shall constitute a charge against the county regardless of the amount of money in the county treasury levied or appropriated for such purposes.

- (F) Any contract for goods or services related to the auditor's duties as assessor, including contracts for mapping, computers, and reproduction on any medium of any documents, records, photographs, microfiche, or magnetic tapes, but not including contracts for the professional services of an appraiser, shall be awarded pursuant to the competitive bidding procedures set forth in sections 307.86 to 307.92 of the Revised Code and shall be paid for, upon the warrant of the auditor, from the real estate assessment fund.
- (G) Experts, deputies, clerks, and other employees, in addition to their other duties, shall perform such services as the auditor directs in ascertaining such facts, description, location, character, dimensions of buildings and improvements, and other circumstances reflecting upon the value of real estate as will aid the auditor in fixing its true and taxable value and, in the case of land valued in accordance with section 5713.31 of the Revised Code, its current agricultural use value. The auditor may also summon and examine any person under oath in respect to any matter pertaining to the value of any real property within the county.

Cite as R.C. § 5713.01

History. Amended by 129th General Assembly File No. 28, HB 153, §101.01, eff. 9/29/2011.

Effective Date: 08-19-1992; 06-30-2005

Related Legislative Provision: *See 129th General Assembly File No. 117, HB 508, §757.10.*

Ohio Statutes
 Title 57. TAXATION
 Chapter 5713. ASSESSING REAL ESTATE

Includes all legislation filed with the Secretary of State's Office through 12/26/2012

§ 5713.03. [Effective Until 3/27/2013] County auditor to determine taxable value of real property

The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of the fee simple estate, as if unencumbered, of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon and the current agricultural use value of land valued for tax purposes in accordance with section 5713.31 of the Revised Code, in every district, according to the rules prescribed by this chapter and section 5715.01 of the Revised Code, and in accordance with the uniform rules and methods of valuing and assessing real property as adopted, prescribed, and promulgated by the tax commissioner. The auditor shall determine the taxable value of all real property by reducing its true or current agricultural use value by the percentage ordered by the commissioner. 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 may consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. However, the sale price in an arm's length transaction between a willing seller and a willing buyer shall not be considered the true value of the property sold if subsequent to the sale:

- (A) The tract, lot, or parcel of real estate loses value due to some casualty;
- (B) An improvement is added to the property. Nothing in this section or section 5713.01 of the Revised Code and no rule adopted under section 5715.01 of the Revised Code shall require the county auditor to change the true value in money of any property in any year except a year in which the tax commissioner is required to determine under section 5715.24 of the Revised Code whether the property has been assessed as required by law. The county auditor shall adopt and use a real property record approved by the commissioner for each tract, lot, or parcel of real property, setting forth the true and taxable value of land and, in the case of land valued in accordance with section 5713.31 of the Revised Code, its current agricultural use value, the number of acres of arable land, permanent pasture land, woodland, and wasteland in each tract, lot, or parcel. The auditor shall record pertinent information and the true and taxable value of each building, structure, or improvement to land, which value shall be included as a separate part of the total value of each tract, lot, or parcel of real property.

Cite as R.C. § 5713.03

History. Amended by 129th General Assembly File No. 127, HB 487, §101.01, eff. 9/10/2012.

Effective Date: 09-27-1983

Related Legislative Provision: See 129th General Assembly File No. 127, HB 487, §757.51.

Note: This section is set out twice. See also § 5713.03, as amended by 129th General Assembly File No. 186, HB 510, §1, eff. 3/27/2013.

Ohio Statutes
 Title 57. TAXATION
 Chapter 5713. ASSESSING REAL ESTATE

Includes all legislation filed with the Secretary of State's Office through 12/26/2012

§ 5713.03. [Effective 3/27/2013] County auditor to determine taxable value of real property

The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of the fee simple estate, as if unencumbered but subject to any effects from the exercise of police powers or from other governmental actions, of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon and the current agricultural use value of land valued for tax purposes in accordance with section 5713.31 of the Revised Code, in every district, according to the rules prescribed by this chapter and section 5715.01 of the Revised Code, and in accordance with the uniform rules and methods of valuing and assessing real property as adopted, prescribed, and promulgated by the tax commissioner. The auditor shall determine the taxable value of all real property by reducing its true or current agricultural use value by the percentage ordered by the commissioner. 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 may consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. However, the sale price in an arm's length transaction between a willing seller and a willing buyer shall not be considered the true value of the property sold if subsequent to the sale:

- (A) The tract, lot, or parcel of real estate loses value due to some casualty;
- (B) An improvement is added to the property. Nothing in this section or section 5713.01 of the Revised Code and no rule adopted under section 5715.01 of the Revised Code shall require the county auditor to change the true value in money of any property in any year except a year in which the tax commissioner is required to determine under section 5715.24 of the Revised Code whether the property has been assessed as required by law. The county auditor shall adopt and use a real property record approved by the commissioner for each tract, lot, or parcel of real property, setting forth the true and taxable value of land and, in the case of land valued in accordance with section 5713.31 of the Revised Code, its current agricultural use value, the number of acres of arable land, permanent pasture land, woodland, and wasteland in each tract, lot, or parcel. The auditor shall record pertinent information and the true and taxable value of each building, structure, or improvement to land, which value shall be included as a separate part of the total value of each tract, lot, or parcel of real property.

Cite as R.C. § 5713.03

History. Amended by 129th General Assembly File No. 186, HB 510, §1, eff. 3/27/2013.

Amended by 129th General Assembly File No. 127, HB 487, §101.01, eff. 9/10/2012.

Effective Date: 09-27-1983

Related Legislative Provision: *See 129th General Assembly File No. 186, HB 510, §3.*

See 129th General Assembly File No. 127, HB 487, §757.51.

Note: *This section is set out twice. See also § 5713.03, effective until 3/27/2013.*

Ohio Statutes
 Title 57. TAXATION
 Chapter 5715. BOARDS OF REVISION; EQUALIZATION OF ASSESSMENTS

Includes all legislation filed with the Secretary of State's Office through 12/26/2012

§ 5715.19. Complaint against valuation or assessment – determination of complaint – tender of tax – determination of common level of assessment

- (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:
- (a) Any classification made under section 5713.041 of the Revised Code;
 - (b) Any determination made under section 5713.32 or 5713.35 of the Revised Code;
 - (c) Any recoupment charge levied under section 5713.35 of the Revised Code;
 - (d) The determination of the total valuation or assessment of any parcel that appears on the tax list, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code;
 - (e) 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;
 - (f) Any determination made under division (A) of section 319.302 of the Revised Code.
- If such a complaint is filed by mail or certified mail, the date of the United States postmark placed on the envelope or sender's receipt by the postal service shall be treated as the date of filing. A private meter postmark on an envelope is not a valid postmark for purposes of establishing the filing date.

Any person owning taxable real property in the county or in a taxing district with territory in the county; such a person's spouse; an individual who is retained by such a person and who holds a designation from a professional assessment organization, such as the institute for professionals in taxation, the national council of property taxation, or the international association of assessing officers; a public accountant who holds a permit under section 4701.10 of the Revised Code, a general or residential real estate appraiser licensed or certified under Chapter 4763. of the Revised Code, or a real estate broker licensed under Chapter 4735. of the Revised Code, who is retained by such a person; if the person is a firm, company, association, partnership, limited liability company, or corporation, an officer, a salaried employee, a partner, or a member of that person; if the person is a trust, a trustee of the trust; the board of county commissioners; the prosecuting attorney or treasurer of the county; the board of township trustees of any township with territory within the county; the board of education of any school district with any territory in the county; or the mayor or legislative authority of any municipal corporation with any territory in the county may file such a complaint regarding any such determination affecting any real property in the county, except that a person owning taxable real property in another county may file such a complaint only with regard to any such determination affecting real property in the county that is located in the same taxing district as that person's real property is located. The county auditor shall present to the county board of revision all complaints filed with the auditor.

- (2) As used in division (A)(2) of this section, "interim period" means, for each county, the tax year to which section 5715.24 of the Revised Code applies and each subsequent tax year until the tax year in which that section applies again.
- No person, board, or officer shall file a complaint against the valuation or assessment of any parcel that appears on the tax list if it filed a complaint against the valuation or assessment of that parcel for any prior tax year in the same interim period, unless the person, board, or officer alleges that the valuation or assessment should be changed due to one or more of the following circumstances that occurred after the

tax lien date for the tax year for which the prior complaint was filed and that the circumstances were not taken into consideration with respect to the prior complaint:

- (a) The property was sold in an arm's length transaction, as described in section 5713.03 of the Revised Code;
 - (b) The property lost value due to some casualty;
 - (c) Substantial improvement was added to the property;
 - (d) An increase or decrease of at least fifteen per cent in the property's occupancy has had a substantial economic impact on the property.
- (3) If a county board of revision, the board of tax appeals, or any court dismisses a complaint filed under this section or section 5715.13 of the Revised Code for the reason that the act of filing the complaint was the unauthorized practice of law or the person filing the complaint was engaged in the unauthorized practice of law, the party affected by a decrease in valuation or the party's agent, or the person owning taxable real property in the county or in a taxing district with territory in the county, may refile the complaint, notwithstanding division (A)(2) of this section.
- (4) Notwithstanding division (A)(2) of this section, a person, board, or officer may file a complaint against the valuation or assessment of any parcel that appears on the tax list if it filed a complaint against the valuation or assessment of that parcel for any prior tax year in the same interim period if the person, board, or officer withdrew the complaint before the complaint was heard by the board.
- (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. Within thirty days after receiving such notice, a board of education; a property owner; the owner's spouse; an individual who is retained by such an owner and who holds a designation from a professional assessment organization, such as the institute for professionals in taxation, the national council of property taxation, or the international association of assessing officers; a public accountant who holds a permit under section 4701.10 of the Revised Code, a general or residential real estate appraiser licensed or certified under Chapter 4763. of the Revised Code, or a real estate broker licensed under Chapter 4735. of the Revised Code, who is retained by such a person; or, if the property owner is a firm, company, association, partnership, limited liability company, corporation, or trust, an officer, a salaried employee, a partner, a member, or trustee of that 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 the property owner's 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.
- (D) The determination of any such complaint shall relate back to the date when the lien for taxes or recoupment charges for the current year attached or the date as of which liability for such year was determined. Liability for taxes and recoupment charges for such year and each succeeding year until the complaint is finally determined and for any penalty and interest for nonpayment thereof within the time required by law shall be based upon the determination, valuation, or assessment as finally determined. Each complaint shall state the amount of overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect classification or determination upon which the complaint is based. The treasurer shall accept any amount tendered as taxes or recoupment charge upon property concerning which a complaint is then pending, computed upon the claimed valuation as set forth in the complaint. If a complaint filed under this section for the current year is not determined by the board within the time prescribed for such determination, the complaint and any proceedings in relation thereto shall be continued by the board as a valid complaint for any ensuing year until such complaint is finally determined by the board or upon any appeal from a decision of the board. In such case, the original complaint shall continue in effect without further filing by the original taxpayer, the original taxpayer's assignee, or any other person or entity authorized to file a complaint under this section.
- (E) If a taxpayer files a complaint as to the classification, valuation, assessment, or any determination affecting the taxpayer's own property and tenders less than the full amount of taxes or recoupment charges as finally determined, an interest charge shall accrue as follows:

- (1) If the amount finally determined is less than the amount billed but more than the amount tendered, the taxpayer shall pay interest at the rate per annum prescribed by section 5703.47 of the Revised Code, computed from the date that the taxes were due on the difference between the amount finally determined and the amount tendered. This interest charge shall be in lieu of any penalty or interest charge under section 323.121 of the Revised Code unless the taxpayer failed to file a complaint and tender an amount as taxes or recoupment charges within the time required by this section, in which case section 323.121 of the Revised Code applies.
 - (2) If the amount of taxes finally determined is equal to or greater than the amount billed and more than the amount tendered, the taxpayer shall pay interest at the rate prescribed by section 5703.47 of the Revised Code from the date the taxes were due on the difference between the amount finally determined and the amount tendered, such interest to be in lieu of any interest charge but in addition to any penalty prescribed by section 323.121 of the Revised Code.
- (F) Upon request of a complainant, the tax commissioner shall determine the common level of assessment of real property in the county for the year stated in the request that is not valued under section 5713.31 of the Revised Code, which common level of assessment shall be expressed as a percentage of true value and the common level of assessment of lands valued under such section, which common level of assessment shall also be expressed as a percentage of the current agricultural use value of such lands. Such determination shall be made on the basis of the most recent available sales ratio studies of the commissioner and such other factual data as the commissioner deems pertinent.
- (G) A complainant shall provide to the board of revision all information or evidence within the complainant's knowledge or possession that affects the real property that is the subject of the complaint. A complainant who fails to provide such information or evidence is precluded from introducing it on appeal to the board of tax appeals or the court of common pleas, except that the board of tax appeals or court may admit and consider the evidence if the complainant shows good cause for the complainant's failure to provide the information or evidence to the board of revision.
- (H) In case of the pendency of any proceeding in court based upon an alleged excessive, discriminatory, or illegal valuation or incorrect classification or determination, the taxpayer may tender to the treasurer an amount as taxes upon property computed upon the claimed valuation as set forth in the complaint to the court. The treasurer may accept the tender. If the tender is not accepted, no penalty shall be assessed because of the nonpayment of the full taxes assessed.

Cite as R.C. § 5715.19

History. Amended by 129th General Assembly File No. 141, HB 509, §1, eff. 9/28/2012.

Effective Date: 03-04-2002; 09-28-2006

Ohio Statutes
 Title 57. TAXATION
 Chapter 5715. BOARDS OF REVISION; EQUALIZATION OF ASSESSMENTS

Includes all legislation filed with the Secretary of State's Office through 12/26/2012

§ 5715.24. Review of assessment by tax commissioner – change of aggregate value

- (A) The tax commissioner, annually, shall determine whether the real property and the various classes thereof in the several counties, municipal corporations, and taxing districts which have completed a sexennial reappraisal in the current year and which will have the new taxable values placed on the tax list and duplicate have been assessed as required by law, and whether the values set forth in the agricultural land tax list in such taxing districts correctly reflect the true and agricultural use values of the lands contained therein. The determination shall be made prior to the first Monday in August unless the commissioner, for good cause, extends the date. If the commissioner finds that the real property or any class thereof in any such county, municipal corporation, or taxing district, as reported to it by the several county auditors of the counties that have completed such reappraisal is not listed for taxation or recorded on the agricultural land tax list in accordance therewith, the commissioner shall increase or decrease the appropriate aggregate value of the real property or any class thereof in any such county, township, municipal corporation, taxing district, or ward or division of a municipal corporation, by a per cent or amount that will cause such property to be correctly valued on the agricultural land tax list and to be correctly assessed on the tax list at its taxable value so that every class of real property shall be listed and valued for taxation and valued for purposes of sections 5713.33 to 5713.35 of the Revised Code as required by law. In determining whether a class of real property has been assessed at its correct taxable value and in determining any per cent or amount by which the aggregate value of the class from a prior year shall be increased or decreased to be correctly assessed, the commissioner shall consider only the aggregate values of property that existed in the prior year and that is to be taxed in the current year. In addition to any other adjustments the commissioner considers necessary to comply with this requirement, the value of new construction shall not be regarded as an increase in such aggregate value from the prior year, and the value of property destroyed or demolished since the prior year shall be deducted from the aggregate value of that class for the prior year. In implementing any increase or decrease in valuation of real property ordered by the commissioner pursuant to this section, the county auditor shall, when practicable, increase or decrease the taxable valuation of parcels in accordance with actual changes in valuation of real property which occur in different subdivisions, neighborhoods, or among classes of real property in the county.

- (B) Division (A) of this section also applies to a county in the third calendar year following the year in which a sexennial reappraisal is completed.

Cite as R.C. § 5715.24

History. Effective Date: 09-27-1983; 06-30-2005

Related Legislative Provision: *See 129th General Assembly File No. 117, HB 508, §757.10.*

Ohio Statutes

Title 57. TAXATION

Chapter 5715. BOARDS OF REVISION; EQUALIZATION OF ASSESSMENTS

Includes all legislation filed with the Secretary of State's Office through 12/26/2012

§ 5715.33. Sexennial reappraisal – reassessment of improperly assessed property

The tax commissioner shall order a reappraisal of all real property in each county once in each six-year period. The commissioner may order the commencement of any sexennial reappraisal in sufficient time for the county auditor to complete the reappraisal as required by section 5713.01 of the Revised Code. The commissioner may order a reassessment of the real property or any class thereof in any taxing district or subdivision thereof in the third calendar year following the year in which a sexennial reappraisal is completed if in his opinion such property has been unequally or improperly assessed, so that all classes of property in such district shall be assessed in compliance with law.

Cite as R.C. § 5715.33

History. Effective Date: 09-27-1983

(B) Each parcel, as improved, has a fair market

value of:

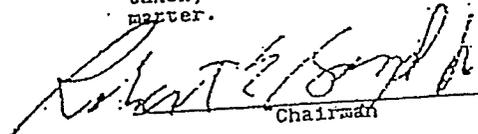
	<u>Parcel 10-16595</u>	<u>Parcel 10-41974</u>	<u>Parcel 10-110313</u>
Land	\$ 91,000.00	\$ 336,050.00	\$ 447,200.00
Building	<u>559,000.00</u>	<u>2,718,950.00</u>	<u>2,347,800.00</u>
Total	\$650,000.00	\$3,055,000.00	\$2,795,000.00

(C) Each parcel, as improved, has a taxable value of:

	<u>Parcel 10-16595</u>	<u>Parcel 10-41974</u>	<u>Parcel 10-110323</u>
Land	\$ 31,850.00	\$ 117,617.50	\$ 156,520.00
Building	<u>195,650.00</u>	<u>951,632.50</u>	<u>821,730.00</u>
Total	\$227,500.00	\$1,069,250.00	\$ 978,250.00

The Franklin County Auditor is ordered to list and assess the subject real property in conformity with this decision.

I hereby certify the foregoing to be a true and correct copy of the action of the Board of Tax Appeals of the State of Ohio, this day taken, with respect to the above matter.


Chairman