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INTRODUCTION

This appeal presents questions of whether a decision of the Board of Tax Appeals may be upheld: despite the fact that the Board conducted the hearing when it was advised the new property owner had no notice of the proceedings; where the only party present at the hearing offered no evidence to meet its burden of proof that the decision of the Board of Revision was erroneous; and the BTA, on its own initiative and without any evidence in the record, assessed the property at a value higher than the auditor.

STATEMENT OF CASE AND FACTS

The property that is the subject of this appeal consists of two parcels embracing a one-story, multi-tenant strip center. Appx., at 8. The auditor for Warren County, Ohio (“auditor”) had assessed the property for ad valorem tax purposes for tax year 2008 at a total value of \$5,066,900. *Id.* The former owner of the property owner, Wasserpach IV, LLC (“Wasserpach”) filed a complaint with the Warren County Board of Revision (“BOR”) requesting a decrease in the valuation to \$3,031,110. *Id.* Wasserpach cited 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.” *Id.*

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 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 percent. *Id.*, at 8. On the basis of

Wasserpach’s evidence—the only evidence before it—the BOR voted unanimously to reduce the assessed value to \$3,353,900. *Id.*, at 9.

Appellee Mason City School District, Board of Education (“Mason”) appealed the decision of the BOR to the Board of Tax Appeals (“BTA”) on or about September 16, 2009.¹ Before Mason had even filed its appeal with the BTA, however, the Warren County Auditor had unlawfully² given Wasserpach \$36,792.16 as a refund of the taxes that would be deemed overpaid if the Board of Revision’s 2008 valuation had been upheld.

While the case was pending before the BTA, Wasserpach transferred the property to Viking Partners Deerfield (“Viking”) on June 21, 2010.”³ The Auditor, Mason and the BTA were all aware of this fact before the hearing. On April 17, 2012, the day prior to the BTA hearing, Bardach [Wasserpach’s lawyer] contacted the BTA to say that he would not be in attendance since Wasserpach no longer owned the property. Counsel for the county Appellees also waived appearance at the hearing, despite the fact that the Auditor had no effective means of recovering the refund prematurely and unlawfully paid to Wasserpach, which by that time had been dissolved. Counsel for the BOE was the only party present at the BTA hearing.⁴

¹ Mason’s Motion to Dismiss, at 3.

² The actions of the Warren County Auditor were doubly wrong. Under Ohio Revised Code §5715.22, the auditor is not to take any action in such circumstances until “final action upon such . . . appeal.” Moreover, the auditor is not to issue a check for a refund as was done here. Instead, the auditor is authorized to give the property owner a credit that may later be applied and deduced from future taxes due.

³ Mason’s Motion to Dismiss, at 3-4.

⁴ Mason’s Motion to Dismiss, at 4.

On July 12, 2012, while the case was still pending before the BTA, Viking transferred the property to Squire Hill Properties II (“Squire Hill”).⁵

On November 16, 2012, six months after the April 18, 2012 hearing—and three years after Mason filed its appeal—the BTA announced its decision to value the property at \$5,350,000, the amount Wasserpach paid for the property in December 2006.

LAW AND ARGUMENT

Proposition of Law No. 1

The decision of the Board of Tax Appeals is a nullity because Squire Hill was denied due process in not being provided constitutionally required notice and an opportunity to be heard.

The BTA conducted the hearing despite the fact that it knew before the hearing that Wasserpach had transferred the property. The record is devoid of any evidence of even an attempt to give notice to the new owner—then Viking. Because the property owner had no notice of the proceedings and no opportunity to be heard, the property owner was denied due process of law. The failure to give notice to the new property owner renders the BTA decision a nullity. Alternatively, the BTA decision must be reversed so that the property owner—now Squire Hill—may participate in the proceedings. *Cincinnati Sch. Dist. Bd. of Educ. v. Hamilton County Bd. of Revision* (2000), 87 Ohio St. 3d 363, 721 N.E.2d 40, 2000 Ohio 452 (The giving of notice to a person who is incorrectly listed on the auditor’s tax list as the owner does not meet the notice requirements of Ohio Revised Code §5715); *Columbus Apartments Assoc. v.*

⁵ Mason’s Motion to Dismiss, at 4.

Franklin Cty. Bd. of Revision (1981), 67 Ohio St. 2d 85, 89-90, 21 Ohio Op. 3d 54, 57, 423 N.E.2d 147, 150, (“In that it is the owner’s, not the school board’s, property which is the subject of the complaint and evaluation proceeding before a board of revision, the owner is an indispensable party to that proceeding”); *Knickerbocker Properties, Inc. XLII v. Delaware Cty. Bd. of Revision* (2008), 119 Ohio St.3d 233, 2008 Ohio 3192, 893 N.E.2d 457, (the use of the wrong address in giving notice of the hearing resulted in both a failure to afford due process rights in holding the hearing and a lack of authority to order the value increase based on that hearing); *MB West Cheser, LLC v. Butler County Bd. of Revision* (2010), 126 Ohio St. 3d 430, 2010 Ohio 3781, 934 N.E.2d 928, 2010 Ohio LEXIS 1939 (The lack of notice to a party entitled to it “compounds the deprivation of the party’s hearing rights”); *Gasper Twp. Bd. of Trustees v. Preble Cty. Budget Comm.*, 119 Ohio St. 3d 166, 2008 Ohio 3322, 893 N.E.2d 136, (vacating BTA decision and remanding so that proper notice could be given and a new evidentiary hearing held).

Proposition of Law No. 2

The decision of the Board of Tax Appeals must be reversed because the Board abused its discretion when it failed to continue the hearing after being informed that Wasserpach no longer owned the property.

Ohio Administrative Code §5717-1-03(E) provides that “In appeals involving real property, the parties shall notify the board of any change in ownership. The notice shall be in writing and shall include the current owner’s name and address.” The purpose of that requirement is to ensure that the property owner has notice of the proceedings. Ohio Administrative Code §5717-1-15(B) provides that “For good cause shown, hearings may be continued by the attorney examiner to whom the appeal has been assigned, by a

board member, or by the board's secretary. The granting of a continuance is within the sound discretion of the board." When the BTA is informed prior to the hearing that a person has transferred the property to another before the hearing, overwhelming good cause exists to continue the hearing to afford the new owner of the property an opportunity to participate. The failure of the BTA to grant a continuance sua sponte to accomplish that purpose was an abuse of discretion. That abuse of discretion compels reversal of the BTA decision.

Proposition of Law No. 3

The decision of the Board of Tax Appeals must be reversed because Mason failed to meet its burden of proof to overcome the record established at the Warren County Board of Revision.

"When 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, 2001 Ohio 16, 740 N.E.2d 276. Mason asked that the auditor's values be retained. Appx., at 8. Mason's counsel appeared at the hearing but offered no evidence. *Id.*, at 9. Instead of evidence, Mason offered argument that the 2006 sale supported the amount assessed by the Auditor. "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."⁶ Without evidence, Mason did not fulfill its burden to reverse the decision of the BOR.

⁶ Appx., at 8. Mason also attacked the methodology of the property owner's appraisal before the BOR but the BTA did not rely on this argument in reaching its decision. Appx., at 9.

Proposition of Law No. 4

The decision of the Board of Tax Appeals must be reversed because the Board lacked authority and had no evidence to support increasing the valuation of the property without notice to Squire Hill.

The BTA decision must be reversed as without authority and unsupported by evidence. First, the BTA increased the valuation over and above the Auditor's assessment. The auditor valued the property at \$5,066,900. The BTA increased that valuation to \$5,350,000. Mason didn't ask for that increase. Consequently, no one had any notice that the BTA was considering it. Because the property owner—then Squire Hill—had no notice, the BTA lacked authority to act.

Second, the BTA had no evidence to support its decision. If the only evidence before the BTA is the statutory transcript from the board of revision, the BTA must make its judgment based on its weighing of the evidence ***contained in that transcript***. *Edbow, Inc. v. Franklin Cty. Bd. of Revision*, 85 OS3d 656, 1999 Ohio 331, 710 N.E.2d 1112, 1999 Ohio LEXIS 1756.

Third, the BTA misapplied the principles set forth by this Court in *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd of Revision* (2005), 106 Ohio St.3d 269, interpreting Ohio Revised Code §5713.03. Under *Berea*, a recent, arm's-length sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm's-length character are genuinely present for that particular sale. As this Court stated in *Cummins Prop. Servs. LLC v. Franklin County Bd. of Revision*:

The reasonableness of the length of time — sometimes expressed as whether the sale was “recent” relative to the tax

lien date — encompasses all factors that would, by changing with the passage of time, affect the value of the property. As we have previously held, general developments in the marketplace are relevant. See *New Winchester Gardens*, 80 Ohio St.3d at 44, 684 N.E.2d 312 (one factor in determining reasonableness is “consideration of changes that have occurred in the market”). Also relevant are those conditions that are specific to the property itself. *Deane v. Miami Cty. Bd. of Revision* (Dec. 12, 2003), B.T.A. No. 2003-N-560 (combination of improvements made between sale and tax lien date and passage of 47 months made sale not “recent”); *M.H. Murphy Dev. Co. v. Franklin Cty. Bd. of Revision* (Dec. 3, 2004), B.T.A. No. 2003-R-1177 (documented changes in zoning and construction made sale price unreliable).

(2008), 117 Ohio St. 3d 516, 2008 Ohio 1473, 885 N.E.2d 222, 2008 Ohio LEXIS 846.

The only evidence on this element of recency came from Wasserpach. Neither Mason nor the Auditor offered any evidence. The BTA recited this Court’s precedent for the proposition 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. Appx., at 10. Here, however, the BTA acknowledges that “documentation of the type described above was not presented to either the BOR or this board.” *Id.*

The BTA then built on this void and concluded “From all indications, such sale appears to be arm’s length and recent to [the] tax lien date. 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.” *Id.*, at 10-11. Consequently, the BTA was relying on evidence outside the record—the 2006 sale—while ignoring evidence in the record—Wasserpach’s appraiser’s

testimony before the BOR—and saying that to consider this hard evidence would be to engage in “conjecture.”

In a footnote, the BTA noted that recency did not hinge on “temporal proximity.” Appx., at 11, n.2. In that respect, BTA cites *Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd of Revision*, 107 Ohio St.3d 250, 2005-Ohio-6434. *Id.* In that case, decided in 2005, a valuation within 12 months of the sale was deemed “recent” and therefore a fair reflection of the property’s value. Prior to 2005, a reasonable person could say that property values would not fluctuate significantly in a period of 12 months, such that a sale a year from the valuation date might be a fair indicator of value. Here, however, the BTA was comparing a 2006 sale to the value on January 1, 2008. The BTA cannot pretend to be unaware of the collapse in the real estate market between the sale date and valuation date. This is not “conjecture” but the harsh reality from which our country has yet to fully recover. During that span when real estate values were plummeting, 12 *weeks* might not qualify as “recent” under *Berea*.

The BTA’s analysis in this respect was arbitrary and capricious. The decision must be reversed.

CONCLUSION

For the foregoing reasons, the decision of the BTA must be reversed and the assessment of the BOR reinstated. In the alternative, the matter must be remanded for proper notice to Squire Hill with the opportunity to be heard in a new hearing.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by ordinary U.S. Mail this 22nd day of March, 2013 upon the following counsel of record:

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Scott R. Thomas

ORIGINAL

FILED/RECEIVED
BOARD OF TAX APPEALS

2012 DEC 17 PM 3:24

Case No. _____

**Supreme Court
of the State of Ohio**

12-2107

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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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,

Chris Finney by Chris Bach per email
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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

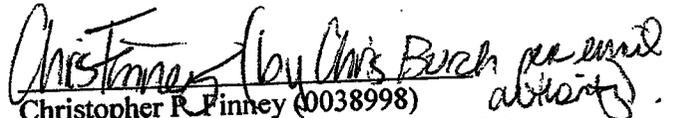
This is to certify that on this 17th day of December 2012, a copy of the Notice of Appeal and a copy of the Demand to Certify Transcript were sent via certified mail to:.

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OHIO BOARD OF TAX APPEALS

Mason City School District, Board of Education,

Appellant,

vs.

Warren County Board of Revision, Warren County Auditor, and Wasserpach IV, LLC,

Appellees.

CASE NO. 2009-K-2364

(REAL PROPERTY TAX)

DECISION AND ORDER

MICK NELSON
WARREN COUNTY AUDITOR
LEBANON, OHIO

2012 NOV 19 PM 12: 21

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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

| | <u>TRUE VALUE</u> | | <u>TAXABLE VALUE</u> |
|----------|-------------------|----------|----------------------|
| Land | \$31,110 | Land | \$10,890 |
| Building | \$ -0- | Building | \$ -0- |
| Total | \$31,110 | Total | \$10,890 |

Parcel No. 16334760012

| | <u>TRUE VALUE</u> | | <u>TAXABLE VALUE</u> |
|----------|-------------------|----------|----------------------|
| 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

| | <u>TRUE VALUE</u> | | <u>TAXABLE VALUE</u> |
|----------|-------------------|----------|----------------------|
| Land | \$31,110 | Land | \$10,890 |
| Building | \$ -0- | Building | \$ -0- |
| Total | \$31,110 | Total | \$10,890 |

Parcel No. 16334760012

| | <u>TRUE VALUE</u> | | <u>TAXABLE VALUE</u> |
|----------|-------------------|----------|----------------------|
| 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. 5713.03 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.").

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); *Zaworsky 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 rounded³ as follows:

Parcel No. 16334760011

| | <u>TRUE VALUE</u> | <u>BASE VALUE</u> | | <u>TAXABLE VALUE</u> |
|----------|---------------------|-------------------|----------|----------------------------|
| 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

| | <u>TRUE VALUE</u> | | <u>TAXABLE VALUE</u> | |
|----------|-------------------|--------------|----------------------|-------------|
| 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 |

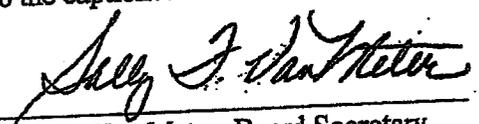
It is therefore the order of this board that the Warren County Auditor list and assess the subject property in conformity with the decision as announced herein.

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BOB 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, 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.").

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.

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

Effective Date: 09-27-1983

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

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.

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

See 129th General Assembly File No. 186, HB 510, § 3.

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

5715.22 Credit and repayment of overpaid taxes.

If upon consideration of any complaint against the valuation or assessment of real property filed under section 5715.19 of the Revised Code, or any appeal from the determination on such complaint, it is found that the amount of taxes, assessments, or recoupment charges paid for the year to which the complaint relates was in excess of the amount due, then, whether or not the payment of said taxes, assessments, or charges was made under protest or duress, the county auditor shall, within thirty days after the certification to him of the final action upon such complaint or appeal, credit the amount of such overpayment upon the amount of any taxes, assessments, or charges then due from the person having made such overpayment and at the next or any succeeding settlement the amount of any such credit shall be deducted from the amounts of any taxes, assessments, or charges distributable to the county or any taxing unit therein which has received the benefit of the taxes, assessments, or charges previously overpaid, in proportion to the benefits previously received. If after such credit has been made, there remains any balance of such overpayment, or if there are no taxes, assessments, or charges due from such person, upon application of the person overpaying such taxes the auditor shall forthwith draw a warrant on the county treasurer in favor of the person who has made such overpayment for the amount of such balance. The treasurer shall pay such warrant from the general revenue fund of the county. If there is insufficient money in said general revenue fund to make such payment, the treasurer shall pay such warrant out of any undivided tax funds thereafter received by him for distribution to any county or any taxing unit therein which has received the benefit of the taxes, assessments, or charges overpaid, in proportion to the benefits previously received, and the amount paid from the undivided tax funds shall be deducted from the money otherwise distributable to such county or other taxing unit of the county at the next or any succeeding settlement. At the next or any succeeding settlement after the refunding of such taxes, assessments, or charges, the treasurer shall reimburse the general revenue fund of the county for any payment made from such fund by deducting the amount of such payment from the money otherwise distributable to the county or other taxing unit in the county which has received the benefit of the taxes, assessments, or charges overpaid in proportion to the benefits previously received.

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.

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

5717-1-03. Entry of appearance, change of address, and withdrawal of counsel.

- (A) Entries of appearance of counsel in any appeal shall be in writing. Such appearance may be effected by the signing of the notice of appeal or pleading or otherwise entered into the record after the scheduling of the appeal for hearing.
- (B) Any party before the board of revision, who desires to participate in an appeal before the board of tax appeals as an appellee, shall enter an appearance with the board of tax appeals within thirty days of the mailing of notice of such appeal by the board of revision.
- (C) Where two or more attorneys represent a party, one attorney shall be designated on each document filed as counsel of record to receive notices and service on behalf of that party.
- (D) Any change of address of a party or counsel of record must be in writing and must be clearly designated as a change of address. A separate change of address must be filed in each appeal in which the party or counsel is involved, unless otherwise ordered by the board.
- (E) In appeals involving real property, the parties shall notify the board of any change in ownership. The notice shall be in writing and shall include the current owner's name and address.

5717-1-15. Hearings.

- (A) The board's secretary or the designated assignment commissioner may schedule each appeal for hearing, and written notice thereof shall be given to the parties or their counsel of record by ordinary mail.
- (B) For good cause shown, hearings may be continued by the attorney examiner to whom the appeal has been assigned, by a board member, or by the board's secretary. The granting of a continuance is within the sound discretion of the board.
- (C) Requests for continuances should be directed to the attorney examiner assigned the case and shall be filed, in writing, at least fourteen days prior to the scheduled hearing date, unless otherwise permitted by the board. If a continuance is requested for the reason that counsel or a witness is scheduled to appear for hearing on the same date before the board or another tribunal, a copy of the tribunal's scheduling notice should be attached to the request.
- (D) A party seeking a continuance shall provide notice to, or obtain the consent of, all other parties. Any objection to a continuance must be filed, in writing, within three days of the filing of the continuance request, unless otherwise ordered by the board.