

ORIGINAL

IN THE SUPREME COURT OF OHIO

MASON CITY SCHOOL DISTRICT,  
BOARD OF EDUCATION

Appellee,

vs.

WARREN COUNTY BOARD OF  
REVISION, et al.

Appellee,

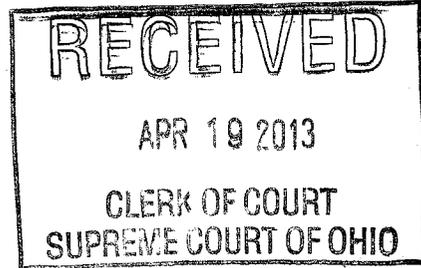
and

SQUIRE HILL PROPERTIES II, LLC,

Appellant

Case No. 2012-2107

On Appeal from the Ohio  
Board of Tax Appeals



MERIT BRIEF OF APPELLEE MASON CITY SCHOOL DISTRICT,  
BOARD OF EDUCATION

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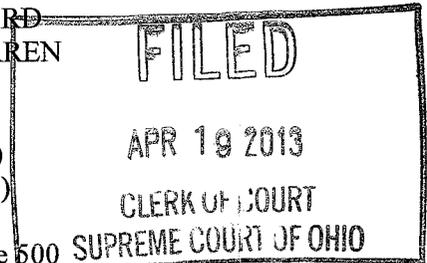
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## INTRODUCTION

This case is about two distinct issues: 1) Can a property owner who gained title in July of 2012, four years after the 2008 valuation date at issue and three months after the BTA hearing, properly assert a due process violation when a different owner filed the complaint giving rise to the valuation dispute and a different owner held title at the time of the alleged failure to notify the owner at the time of the BTA hearing; and 2) Should the BTA's determination of the facts concerning the 2008 valuation be set aside?

This appeal distorts the facts and distorts the law in an effort to correct for the new owner's failure to properly investigate the tax status of a troubled property in Warren County prior to its purchase in 2012. The appeal requests that established real estate and tax practices, not to mention long-standing statutory requirements, be set aside to correct their problem. Obviously, such an approach is inappropriate and unsupported by legal precedent.

We urge the Court to focus on what actually happened and whether it was done according to law, and not be misled by speculation and innuendo.

Ohio law provides that an owner of real estate can file a complaint to reduce the valuation for tax purposes, and that complaint was properly filed by the owner (Wasserpach IV, LLC) in early 2009, contesting the value as of January 1, 2008.

Ohio law provides that a recent sale is the best evidence of value in tax cases, so the school district opposed the Wasserpach complaint, and expressly noted the sale price from roughly 12 months earlier in its counter-complaint. (The Auditor had lowered the

2008 value slightly from the 2006 purchase price.) The sale was admitted to by the owner's attorney at the BOR hearing, and repeatedly referred to and discussed at the BOR hearing.

The BOR refused to apply the sale price and lowered the value, so the school district appealed to the BTA, according to the law. The owner must have been aware of the BTA appeal, since its counsel was copied on hearing notices and wrote a letter to the BTA the day before the BTA hearing saying he would not appear since his client no longer owned the property.

According to law, the hearing went forward as scheduled, and only the school board attended. (The county waived appearance at the hearing.) The hearing was held April 18, 2012.

Apparently, some time after the BTA hearing but before the issuance of the BTA decision, Appellant Squire Hill Properties II, LLC became the owner of the subject property. It somehow became aware of the BTA decision and filed a Supreme Court appeal of the BTA decision, contending that the process should begin over again, and all prior compliance with statutes and laws should be set aside because the it was now liable for the increased taxes that it failed to escrow for at the 2012 closing of the purchase. (There was apparently an intervening owner of the property between the Wasserpach II, LLC ownership and the 2012 purchase by Squire Hill. That owner was apparently the titleholder at the time of the BTA hearing. It did not file any notice of appearance at the BTA nor did it try to appeal the BTA decision.)

Squire Hill's legal position seems to be that if ownership changes at any time prior to a final decision being issued, the due process rights of the new owner dictate that it be allowed to start the process over again.

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

The BOR complaint was filed by the owner, Wasserpach IV, LLC on January 22, 2009. The BOR hearing was held on August 12, 2009, at the depth of the economic recession that started in the fall of 2008.

The tax lien date at issue, however, was January 1, 2008, and the true value should reflect market conditions as of January 1, 2008, not the severe economic hardships of the later recession. Several key facts were established as part of the underlying BOR record:

- 1) The property was sold on December 15, 2006, roughly one year before the lien date of January 1, 2008. The property was called "The Shoppes at Deerfield South". The sworn complaint and counter-complaint specifically stated that the property sold in December of 2006 for \$5,350,000. (Supp.14-15). The sale was discussed at the BOR hearing. (Supp.1). The owner's counsel admitted the December 2006 purchase and the School Board's counsel expressly discussed the sale. (Supp.2,8). The owner's appraiser testified to the sale at the BOR hearing. (Supp.2.)
- 2) The appraiser for the owner never conducted a formal comparison of market conditions between the date of the sale and the lien date. The appraiser explained at the BOR hearing that he used the actual vacancy (rather than "market" data) to establish a value. (Supp.3). He admitted he used 2009 expense data. (Supp.4). He

discussed at length what is currently going on in the depth of the 2009 recession but did not expressly analyze data from late 2007 and early 2008 which a prospective purchaser would look at. (Supp.4).

3) The appraiser discussed his approach at the hearing, saying that “..we are sitting here with somewhat sailing on uncharted waters....” .(Supp.4). In other words, he is speculating about market conditions in August of 2009. He stated that the “bottom falls out” of rental rates but of course that occurred after the recession started. He never specifically shows what actual market rates were in January of 2008, nine months before the recession started. He again demonstrated that he is looking at 2009 when he testified to what it is worth “today” .(Supp.5).

4) The BOR decided not to adopt the sale price, but instead lowered the value. The School Board appealed to the Board of Tax Appeals.

5) Wasserpach did not notify the BTA of the name and address of any new owner. The BTA hearing went forward as scheduled and only the Appellant at the BTA hearing (the School Board) showed up at the hearing.

6) Several months after the BTA hearing was held in April of 2012, Squire Hill acquired the subject property. No explanation has been given why it did not investigate the tax status of the property and escrow for the potential increase in taxes.

7) On November 16, 2012 the BTA issued its decision increasing the value to the sale price of \$5,350,000.

## 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 opportunity to be heard**

There was no violation of due process rights in this case. The cases cited by Appellant relate to due process rights arising from statutory notice requirements for BOR complaints. In the instant case, Wasserpach was the owner, and was obviously aware that it had filed a BOR complaint to lower the value. No violation of anyone's statutory notice requirements for the BOR filing occurred. To suggest otherwise is to distort the facts in this case. To suggest that the BOR due process cases support a duty to notify an owner of property who acquires title after the BOR hearing and after the BTA hearing is to distort the law. Squire Hill was not the owner at the time due process notices were due from the BOR complaint or the BOR hearing. Squire Hill was not the owner at the time of the BTA hearing.) Amazingly, Squire Hill now claims its due process rights were violated by a hearing held before it gained title to the property.

The case of Knickerbocker Property Inc. XLII v. Delaware County Board of Revision (2008), 119 Ohio St.3d 233 was cited by Appellant in support of its due process argument. That case involved the need to properly notify the owner of an upcoming hearing. In our case, Squire Hill was not the owner at the time of the hearing, and has no standing to argue alleged due process violations at such hearing. Only the party aggrieved by due process violations can assert such an appeal. Clearly, Squire Hill lacks any standing to assert any due process violations.

If subsequent owners who gain title to property after BTA and Supreme Court hearings are concluded can get a “redo” of all prior hearings as long as title changes prior to the issuance of the legal decision, there will never be any finality in litigation. It is simply not workable.

### **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**

As noted earlier, Squire Hill was not the owner of the property at the time of the BTA hearing, and therefore had no standing (and has no due process rights relating to the BTA hearing) to complain about the notice of the hearing. Also, the owner failed to notify the BTA of the name and address of the new owner.

### **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.**

While it is normally true that the party which files the BTA appeal has the burden of proof at the BTA, that is not true when a sale is involved. When the issue is whether a proffered sale price should be used to value the property, the burden at the BTA is on the same party who bore that burden at the BOR- -the opponent of using the sale price.

Cummins Property Servs. v. Franklin Cty. Bd. of Revision (2008), 117 Ohio St. 3d 516,

2008 Ohio 1473; North Royalton City School District v. Cuyahoga County Bd of Revision (2011), 129 Ohio St.3d 172, 2011-Ohio-3092.

In addition, even if the burden was on the School District at the BTA, it met its burden by relying on evidence already in the record- -the statements by representatives of the owner that the property had been sold and a written statement by the owner on its BOR complaint, under oath, that the property had sold. Obviously, sufficient evidence was marshaled by the school district to establish that the property had sold. It is undisputed that the property sold for \$5,350,000 on December 15, 2006.

#### **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.**

This court will not disturb a valuation decision of the Board of Tax Appeals unless it affirmatively appears from the record that such decision is unreasonable or unlawful. Cuyahoga County Bd of Revision v. Fodor, 15 Ohio St.2d 52 (1968); Columbus City School District Bd of Education v. Franklin County Board of Revision (2012), 134 Ohio St.3d 529, 2012-Ohio-5680.

In the present case, the owner of the property who filed the valuation complaint admitted that it purchased the property for \$5,350,000 roughly a year before the January 1, 2008 lien date. (Supp. 14). Obviously, the BTA had every right to consider this fact when it decided to value the property at the sale price. Under the cases cited above, the Court should not disturb such a finding.

In the face of a recent arm-length sale, appraisal evidence should not be considered since the sale price is the best evidence of value. Berea City School District Bd. of Education v. Cuyahoga County Bd of Revision (2005), 106 Ohio St.3d 269, 2005-Ohio-4979.

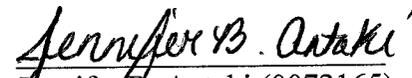
### CONCLUSION

Squire Hill lacked standing to assert any due process violation, since it was not the owner of the property at the time the valuation hearing was held. The party that did own the property in April of 2012 has not appealed the BTA decision nor asserted any due process violation.

The BTA's decision on valuation was proper and lawful. It considered the recent arms-length sale of the property to be the best evidence of value.

The appeal should be overruled.

Respectfully submitted,

  
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**CERTIFICATE OF SERVICE**

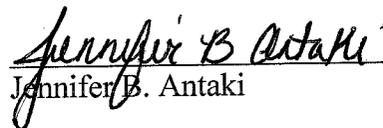
I hereby certify that a copy of the Appellee Mason City School District Board of Education's Brief has been served by ordinary U.S. Mail this 18<sup>th</sup> day of April, 2013

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