

ORIGINAL

IN THE SUPREME COURT OF OHIO

**MASON CITY SCHOOL DISTRICT,
BOARD OF EDUCATION,**

**Ohio Supreme Court
Case No. 2012-2107**

Appellee,

**On Appeal from the Ohio
Board of Tax Appeals
Case No. 2009-K-2364**

v.

**WARREN COUNTY BOARD OF
REVISION, et al.,**

Appellees,

and

**SQUIRE HILL PROPERTIES II,
LLC,**

Appellant.

REPLY BRIEF OF APPELLANT SQUIRE HILL PROPERTIES II, LLC

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Introduction

Appellees Warren County Board of Revision and Warren County Auditor (collectively “Warren County”) agree that the decision of the Board of Tax Appeals (“BTA”) must be reversed. Specifically, Warren County agrees with the third and fourth propositions of law presented by Appellant Squire Hill Properties II, LLC (“Squire Hill”). Warren County states:

In its third and fourth propositions of law, Squire Hill argues that the BTA’s decision must be reversed because the BOE did not meet its burden of proof since it did not present evidence of the 2006 sale; the BOE merely argued that the 2006 sale supported the Auditor’s original assessment. Squire Hill also argues that the BTA’s decision was not supported by the evidence since no evidence regarding the 2006 sale was ever presented to either the Board or the BTA. The Board agrees with Squire Hill’s arguments regarding the sufficiency of the evidence.

Warren County Brief, at 4.

Accordingly, Squire Hill’s Reply will focus on the arguments of Appellee Mason City School District, Board Of Education (“Mason”). Mason presents two arguments: lack of standing and the sky is falling. Neither argument has any merit. Before refuting those arguments, Mason’s attempt to muddy¹ the undisputed facts must be thwarted.

¹ In its brief, Mason attempts to portray itself as the confused outsider: “**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. . . . There was **apparently** an intervening owner of the property between the Wasserpach II [sic], LLC ownership and the 2012 purchase by Squire Hill. That owner was **apparently** the titleholder at the time of the BTA hearing.” Mason’s Brief, at 2 (emphasis supplied). As shown in the quotations from prior Mason pleadings contained in the footnotes below, Mason knows exactly who owned what, when they owned it, and the details of all the transactions. The feigned unawareness is an attempt to cloud the issues to facilitate its semantic arguments, as discussed in footnote 8 below.

**The undisputed facts show
the property owner was given no notice of the BTA hearing**

The key facts on which this appeal turns are not in dispute²:

- The case got started by the first owner, Wasserpach IV, LLC (“Wasserpach”), which filed the Original Complaint in this case with the Warren County Board of Revision (“BOR”).³
- The BOR, having reviewed Wasserpach’s appraisal and heard the testimony of its appraiser, voted to reduce the value of the property to \$3,353,900.⁴ Mason appealed to the Board of Tax Appeals.⁵
- Between the BOR decision and the BTA hearing, Wasserpach sold the property to the second owner, Viking Partners Deerfield (“Viking”).⁶
- The day before the hearing, Wasserpach’s attorney, Mr. Bardach, informed the BTA that Wasserpach no longer owned the property but went forward with the hearing anyway,⁷ despite

² To demonstrate that the facts are not in dispute, Squire Hill will cite to the record where Mason has asserted the facts enumerated here.

³ “The former owner, Wasserpach IV, LLC (“Wasserpach’), filed the Original Complaint in this case with the Warren County Board of Revision (“BOR”) requesting a decrease in the subject property’s true value to \$3,031,110 for tax lien date, January 1, 2008.” Mason’s Motion to Dismiss, at 3 (footnote omitted).

⁴ “At the hearing before the BOR, Wasserpach submitted the written appraisal and testimony of appraiser Gene Minion who opined a value of \$2,942,000 for the leased fee interest in the subject property. The BOR voted to reduce the value of the property to \$3,353,900.” Mason’s Motion to Dismiss, at 3.

⁵ Mason “appealed the decision of the BOR to the Board of Tax Appeals on or about September 16, 2009.” Mason’s Motion to Dismiss, at 3.

⁶ “While the case was pending before the BTA, a transfer of the subject property took place from Wasserpach to Viking Partners Deerfield on June 21, 2010.” Mason’s Motion to Dismiss, at 3-4.

⁷ “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. Counsel for the BOE was the only party present at the BTA hearing.” Mason’s Motion to Dismiss, at 4.

lack of notice to the current property owner.⁸

- After the hearing but prior to the BTA decision, Viking sold the property to the third owner, Squire Hill.⁹
- On November 16, 2012, the BTA made its decision. The BTA served a copy of the decision on “the Appellee Property Owner,” by sending it to Mr. Bardach, the lawyer for Wasserpach, thus confirming that the BTA never made any effort to determine who the property owner was before or after the hearing.¹⁰

Squire Hill has Standing

Mason sums up its only legal argument as follows: “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

⁸ In its brief, Mason argues semantics: “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.” Mason’s Brief, at 2. “The owner” that Mason is referring to is not Viking or Squire Hill but Wasserpach. This is evident because the “counsel” who “wrote a letter to the BTA” was Mr. Bardach, the attorney for Wasserpach. As the BTA noted: “The day prior to the hearing, **counsel for Wasserpach** advised this board that he would not be in attendance as Wasserpach no longer owns the subject property.” Board of Tax Appeals, Decision and Order, November 16, 2012, at 3, n.1 (emphasis added). Absent proof that Viking was given reasonable notice, due process was denied.

⁹ “[W]hile the case was still pending before the BTA, another transfer of the subject property took place from Viking Partners Deerfield to [Squire Hill] on July 12, 2012” Mason’s Motion to Dismiss, at 4. Mason had earlier asserted that Squire Hill acquired the property “for \$0 consideration.” Mason’s Motion to Dismiss, at 4. Squire Hill refuted that suggestion with a document that Mason had filed in Warren County ten days earlier, which noted that Squire Hill paid not \$0 but \$3.2 million for the property. A copy of Mason’s Countercomplaint with cover letter was attached at **Exhibit 1** to Squire Hill’s Memorandum opposing Mason’s Motion to Dismiss. Mason’s brief is silent on this point now.

¹⁰ BTA Decision, at 1.

violations.”¹¹ To refute that spurious argument, the Court need look no further than Mason’s own words in its Motion to Dismiss: “Wasserpach, Viking Partners Deerfield and Squire Hill, as owners of the subject property, were responsible for the taxes due on the property during the relevant time period”¹² These taxes run with the land. Because it is undisputed that Squire Hill is “responsible for the taxes due on the property,” Squire Hill has Gibraltar-like standing to contest the lack of notice given to Viking regarding the hearing at which the property value supporting those taxes would be determined. The county cannot tax any later property owner if the property owner at the time of the valuation hearing was not given notice. The passage of time and the change in ownership are irrelevant when—as here—it is undisputed that the BTA held the hearing despite its knowledge that the person who owned the property on the date of the hearing had no notice of the proceedings.

The Sky is Falling

When no tenable legal argument is available, litigants sometimes resort to the tactic of trying to generate fear in the Court’s mind about the perceived evils that will arise from a ruling in their adversary’s favor. Mason does precisely this when it says:

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.¹³

Thus, Mason argues that lawsuits of this kind will go on and on interminably if Squire Hill is given due process. The flaw in Mason’s position is that ***Squire Hill has***

¹¹ Mason’s Brief, at 5.

¹² Mason’s Motion to Dismiss at 6.

¹³ Mason’s Brief, at 6.

never made the argument that Mason tries to refute. That is, Squire Hill has *never* said that it is entitled to a “mulligan” at the BTA because the first owner, Wasserpach, didn’t own the property at the time of the BTA hearing. Moreover, Squire Hill has *never* argued that it is entitled to a “do-over” because the second owner, Viking, sold the property to Squire Hill between the BTA hearing and the BTA decision.

On the contrary, Squire Hill has simply stated that the BTA fails to provide due process when it moves forward with a hearing despite its knowledge that the *current* owner of the property has no knowledge of the proceedings. Granting an affected property owner due process does not open a Pandora’s Box¹⁴ but merely affirms a key principle on which the fairness of our system of justice is based.

Like all advocates adopting the Chicken Little role, Mason argues about the burden that will be imposed by an unfavorable ruling: “It is unfair and unjust that the Courts and school districts should spend resources trying to ascertain who is responsible for the property’s tax liabilities.”¹⁵ This argument is rather ironic, coming from Mason. Mason sits like a spider atop its web over the Warren County Recorder’s Office. When a deed is filed causing that web to tremble, Mason springs into action and examines the cause of the disturbance. If the transaction documents reflect a sale at a price higher than the valuation figure determined by the County Auditor, Mason spins out a complaint asking the Board of Revision to increase the valuation. Mason can encase this

¹⁴ Mason also argues that “[t]he appeal requests that established real estate and tax practices, not to mention long-standing statutory requirements, be set aside to correct their problem.” Mason’s Brief, at 1. Since these unidentified real estate practices, tax practices, and long-standing statutory requirements are *not discussed anywhere* in Mason’s Brief, Squire Hill will follow Mason’s suggestion to “focus on what actually happened and . . . not be misled by speculation and innuendo.” Mason’s Brief, at 1.

¹⁵ Mason’s Motion to Dismiss, at 6.

property with its BOR complaint within *minutes*. If this case turns on the juxtaposition of the impalpable burden of looking at a property record to identify the new owner when notified of a transaction, on the one hand, and in the other hand sits two centuries of jurisprudence on the basic fairness of giving notice to affected persons, the Court's path is clear.

**Even if Mason is right,
Mason is wrong**

Even if we pretend that notice to Wasserpach would satisfy due process as notice to Viking, the BTA decision would still have to be reversed. Wasserpach filed a BOR Complaint seeking a reduction of the property valuation. Mason filed a Countercomplaint seeking that the Auditor's value be maintained.¹⁶ As such, Wasserpach was put on notice that the worst that could happen at the BTA was that its request for a reduced valuation would be denied and the status quo would be maintained. Not even Wasserpach had any notice that the proceedings might result in an *increase* in the valuation of the property above the figure set by the Auditor. Yet that is precisely what the BTA did, increasing the Auditor's valuation of \$5,066,900 to \$5,350,000.¹⁷ No one, not even Wasserpach, had notice of this possibility. Where the BTA acts beyond the parameters defined by scope of relief requested in the Complaint and Countercomplaint before the BOR, the notice is inherently infirm and the proceedings are a nullity. The BTA decision must be reversed.

¹⁶ Mason "filed a countercomplaint, also referencing the sale 12 1/2 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." BTA Decision, at 2.

¹⁷ BTA Decision, at 2, 6.

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 BTA 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
7th day of May, 2013 upon the following counsel of record:

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