



## MEMORANDUM IN OPPOSITION

Appellee Mason City School District, Board of Education (“Mason”) prevailed below at the Board of Tax Appeals (“BTA”)—despite offering no evidence to meet its burden—for the simple reason that the BTA knowingly held the hearing despite lack of notice to the property owner. In this Court, Mason argued that the case should be dismissed because Appellant Squire Hill Properties II, LLC (“Squire Hill”), failed to serve a prior owner of the land, a now defunct company which would have no legal interest in these proceedings even if it had not gone out of business. On the merits, Mason argues that Squire Hill lacks standing, i.e., that the appeal could only be brought by the party that owned the land on the day of the hearing that no one knew about, despite the fact that that person sold the land prior to the BTA’s decision.<sup>1</sup> Now, Mason wants this Court to cut the time Squire Hill is allotted to expose Mason’s flawed arguments. Like its earlier positions, Mason’s argument has no basis in reality. Because Mason’s motion is based on the groundless assertion that Squire Hill is aligned with Appellees Warren County Auditor and the Warren County Board of Revision (“Warren County Appellees”), Mason’s motion must be denied.

No Board of Revision can fairly be said to be aligned with any private litigant. The Boards of Revision are established by Ohio law to hear complaints regarding property values. The Board of Revision consists of the County Auditor, the County Treasurer, and the President of the Board of County Commissioners. The Auditor’s office provides support staffing to assist the Board of Revision in scheduling and fulfilling its clerical requirements. As such, the Board of Revision is an arm of the

---

<sup>1</sup> Mason’s Appellate Brief, at 8.

county government. By its nature, the Board of Revision does not align itself with individuals but seeks to fulfill its statutory duties as guided by Ohio law. Like Justice herself, the Board of Revision must be blind to the identity of the parties.

Even if we ignore the Board of Revision's appropriate indifference to the identities of the parties who come before it with complaints about property values, Mason's argument of alignment does not make sense. Mason argues that the brief of the Warren County Appellees represents a "capitulation" which Mason finds "not surprising" because Mason "filed an appeal from the Board of Revision's decision and succeeded in having it overturned by the BTA on appeal." Mason's Motion, at 2.

The Warren County Appellees' position is not a "capitulation" but merely a recognition of a fact—a fact that Mason does not dispute—and the legal conclusion that inexorably flows from that fact. Specifically, the Warren County Appellees state:

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.

Brief of Warren County Appellees, at 4. Mason does not, and cannot, contest that it presented no evidence to the Board of Tax Appeals. The Board of Revision's legal conclusion is inescapable.

Viewed from another perspective, Mason's argument is internally inconsistent. Mason forgets that there are **two** Warren County Appellees: the Board of Revision and the Warren County Auditor. At the Board of Tax Appeals, Mason sought to reinstate the

Auditor's determination of the property value. To the extent that Mason "succeeded" at the Board of Tax Appeals, Mason's position is consistent with the position of the Auditor. Stated another way, the property value initially assigned by the Auditor at the start of this legal journey forever makes the position of the Auditor adverse to Squire Hill. As such, there is no basis for altering the allotment of argument time.

Mason concludes its argument with the afterthought that its "oral argument will also include discussion of [its] pending Motion to Dismiss . . . ." <sup>2</sup> This Court's Rules of Practice make no provision for oral argument on motions. Mason should have filed a motion if it wanted oral argument on its notion that Squire Hill should have served a defunct entity in its chain of title. Mason has not asked for oral argument on that motion to dismiss in the five months since it was filed. By analogy to the 20-day period set forth in S.Ct.Prac.R. 17.02(B), Mason's request for argument—at least as to the motion to dismiss—would seem untimely.

For these reasons, Mason's argument that Squire Hill and the Warren County Appellees are on the "same side" is untenable. Cutting Squire Hill's allotted argument time in half is but the latest in a series of spurious hypertechnical games Mason has played in its efforts to get an unfair advantage. Mason's motion must be denied.

Respectfully submitted,



---

Scott R. Thomas (0061040)  
Carlo R. Wessels (0051291)  
HEMMER DEFRANK PLLC

---

<sup>2</sup> Mason's Motion, at 3. This suggestion itself is odd, as the issue in Mason's motion to dismiss—the impact of not serving a prior owner of the subject property—is not addressed anywhere in its merit brief.

250 Grandview Drive, Suite 500  
Ft. Mitchell, Kentucky 41017  
(859) 344-1188  
(859) 578-3869 (fax)  
[sthomas@hemmerlaw.com](mailto:sthomas@hemmerlaw.com)

Trial Attorneys for Appellant  
Squire Hill Properties II, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Appellant's Response to Motion to Vary Time has been served by ordinary U.S. Mail this 29<sup>th</sup> day of August, 2013 upon the following counsel of record:

Jennifer B. Antaki, Esq.  
DAVID C. DIMUZIO, INC.  
810 Sycamore Street, 6<sup>th</sup> Floor  
Cincinnati, Ohio 45202

Christopher Watkins, Esq.  
Warren County Prosecutor's Office  
406 Justice Center  
Lebanon, Ohio 45036

*Counsel For Appellee*  
*Mason City School District,*  
*Board of Education*

*Counsel For Appellees*  
*Warren County Board Of Revision*  
*and Warren County Auditor*

R. Michael DeWine, Esq.  
Ohio Attorney General  
30 East Broad Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215-3428

*Counsel For Appellee*  
*Joseph W. Testa, Ohio Tax Commissioner*



---

Scott R. Thomas