

ORIGINAL

IN THE SUPREME COURT

STATE OF OHIO

APPEAL FROM THE BOARD OF TAX APPEALS

ERIE COUNTY BOARD OF REVISION,
ERIE COUNTY AUDITOR,
AND TAX COMMISSIONER OF THE
STATE OF OHIO,

Appellees,

and

PERKINS LOCAL SCHOOL DISTRICT
BOARD OF EDUCATION,

Appellee,

v.

2509 HAYES, LLC,

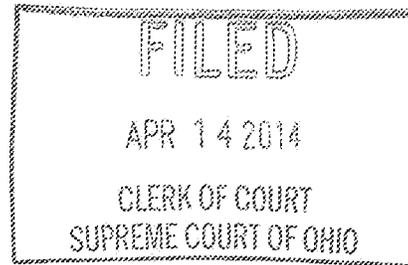
Appellant.

SUPREME COURT CASE
NUMBER:

14-0593

FILED/RECEIVED
BOARD OF TAX APPEALS
2014 APR 14 PM 4:35

BOARD OF TAX APPEALS
CASE NUMBERS 2010-2755/2900



NOTICE OF APPEAL

Kevin J. Baxter, Esq.
Erie County Prosecuting Attorney
247 Columbus Avenue, Suite 319
Sandusky, Ohio 44870
(419) 627-7691
(419) 627-7567 FAX

Kelley A. Gorry, Esq.
COUNSEL OF RECORD
Rich & Gills Law Group, LLC
6400 Riverside Drive, Suite D
Dublin, Ohio 43017
(614) 228-5822
(614) 540-7474

Andrew M. Ferris, Esq. (0065121)
COUNSEL OF RECORD
Baker & Hostetler, LLP
65 East State Street, Suite 2100
Columbus, Ohio 43215
(614) 228-1541
(614) 462-2616 FAX

ATTORNEY FOR APPELLANT,
2509 HAYES, LLC

COUNSEL OF RECORD

Rich & Gillis
Riverside Drive
Columbus, Ohio
(614) 228-5822
(614) 540-7471 FAX

ATTORNEYS FOR APPELLEES,
ERIE COUNTY BOARD OF REVISION
AND THE ERIE COUNTY AUDITOR

Karrie M. Kalail, Esq.
COUNSEL OF RECORD
Britton, Smith, Peters, & Kalail Co., L.P.A.
Three Summit Park Drive, Suite 400
Cleveland, Ohio 44131
(216) 503-5070
(216) 503-5065 FAX

ATTORNEY FOR APPELLEE,
PERKINS LOCAL SCHOOL DISTRICT
BOARD OF EDUCATION

Mike Dewine, Esq.
Ohio Attorney General
James A. Rhodes State Office Tower
30 East Broad Street, 14th Floor
Columbus, Ohio 43215
(614) 462-7519
(614) 466-8226 FAX

ATTORNEY FOR APPELLEE,
TAX COMMISSIONER OF THE
STATE OF OHIO

The Errors complained of are attached hereto as "Exhibit B," which is incorporated herein by reference.

Respectfully submitted,



Andrew M. Ferris, Esq. (0065121)
COUNSEL OF RECORD
Baker & Hostetter LLP
65 East State Street, Suite 2100
Columbus, Ohio 43215
(614) 228-1541
(614) 462-2616 FAX

ATTORNEY FOR APPELLANT,
2509 HAYES, LLC

EXHIBIT A
OHIO BOARD OF TAX APPEALS

Perkins Local School District Board of Education,)	CASE NOS. 2010-2755
)	and 2010-2900
)	
Appellant/Appellee,)	(REAL PROPERTY TAX)
)	
and)	DECISION AND ORDER
)	
2509 Hayes, LLC,)	
)	
Appellee/Appellant,)	
)	
vs.)	
)	
Erie County Board of Revision and Erie County Auditor,)	
)	
)	
Appellees.)	

APPEARANCES:

For the Board of Education	-	Britton, Smith, Peters & Kalail Co., LPA Karrie M. Kalail Three Summit Park Drive, Suite 400 Cleveland, Ohio 44131
For the Property Owner	-	Baker & Hostetler, LLP Andrew M. Ferris Capitol Square, Suite 2100 65 East State Street Columbus, Ohio 43215-4260
For the County Appellees	-	Kevin Baxter Erie County Prosecuting Attorney Kelley A. Gorry Rich & Gillis Law Group, LLC 6400 Riverside Drive, Suite D Dublin, Ohio 43017

Entered **MAR 18 2014**

Mr. Williamson, Mr. Johrendt, and Mr. Harbarger concur.

The board of education (“BOE”) and property owner appeal a decision of the board of revision (“BOR”) which determined the value of the subject real property, parcel number 32-01325.000, for tax year 2009. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board. The subject’s total true value was initially assessed at \$11,985,170. A decrease complaint was filed by the

property owner seeking a decrease in value to \$2,500,000. A countercomplaint was filed by the BOE seeking to retain the auditor's valuation. The BOR issued a decision retaining the auditor's valuation. Both the property owner and the BOE thereafter appealed to this board.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129. Then, 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.

Here, it is undisputed that the subject parcel transferred on August 13, 2008 for \$25,500,000.¹ Absent an affirmative demonstration such sale is not a qualifying sale for taxation purposes, we find the transaction was both recent,² arm's-length, and constitutes the best indication of the subject's value as of tax lien date.³ Accordingly, we will not consider the owner's appraisal evidence. See *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

¹ The existence of a facially qualifying sale may be confirmed through a variety of means, e.g., purchase agreement, deed, conveyance fee statement, property record card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio-5932; *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision*, Slip Opinion No. 2014-Ohio-104.

² The Supreme Court has made it clear that no "bright line" test exists when establishing recency and that the mere passage of time does not, per se, render a sale unreliable. See, e.g., *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059.

³ While the owner argues that the sale overstates the property's true market value because it involved a sale-leaseback, such transactions have previously been found to be arm's-length in nature. See *AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision*, 119 Ohio St.3d 563, 2008-Ohio-5203; *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Franklin App. No. 12AP-682, 2013-Ohio-4504. We further note that the August 2008 sale was previously found to be arm's-length by this board, in *Perkins Local School Dist. Bd. of Edn. v. Erie Cty. Bd. of Revision* (June 26, 2012), BTA No. 2009-K-1509, unreported, pending on appeal, Sup Ct. No. 2012-1238.

based upon other factors is appropriate.”). It is therefore the order of this board that the subject parcel’s true and taxable values, as of January 1, 2009, were as follows:

	TRUE VALUE	TAXABLE VALUE
Total	\$ 25,500,000	\$ 8,925,000

It is the order of the Board of Tax Appeals that the Erie County Auditor list and assess the subject parcel in conformity with this decision and order.

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.



A.J. Groeber, Board Secretary

EXHIBIT "B"

ASSIGNMENT OF ERRORS

ASSIGNMENT OF ERROR NO. 1:

The Board of Tax Appeals' Decision and Order rejecting the un rebutted evidence of the property owner is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 2:

The Board of Tax Appeals' Decision and Order excluding the testimony of the property owner's expert witness and employee is unreasonable, unlawful and arbitrary and fails to consider the basis and circumstances of their appearance and testimony before the Board of Tax Appeals.

ASSIGNMENT OF ERROR NO. 3:

The Board of Tax Appeals' Decision and Order adopting the sale of price of the property as its fair market value is unreasonable, unlawful and arbitrary because it is inconsistent with the Ohio Supreme Court's decisions that sale-leaseback financing transactions are not reflective of the fee simple value of real property.

ASSIGNMENT OF ERROR NO. 4:

The Board of Tax Appeals' Decision and Order is unreasonable and unlawful because it fails to provide an adequate legal or factual basis for its conclusion that the sale price as reflected on the conveyance fee statement is the best evidence of the fair market value of the property.

ASSIGNMENT OF ERROR NO. 5:

The Board of Tax Appeals' Decision and Order is unreasonable and unlawful because the Board of Education failed to provide any evidence to carry its burden of persuasion that the sale price as reflected on the conveyance fee statement is the best evidence of the fair market value of the property.

ASSIGNMENT OF ERROR NO. 6:

The Board of Tax Appeals' Decision and Order erroneously relied upon a sale-leaseback financing transaction to value the subject property when no other evidence was introduced to establish that such transaction reflected the fair market value of the property.

ASSIGNMENT OF ERROR NO. 7:

The Board of Tax Appeals' Decision and Order erroneously found that the property owner did not provide sufficient evidence to rebut the presumption that the sale price recorded on the conveyance fee statement was the best evidence of value.

ASSIGNMENT OF ERROR NO. 8:

The Board of Tax Appeals' Decision and Order erroneously rejected the finding of the Erie County Board of Revision that the property owner had rebutted the presumption that the sale price as reflected by the conveyance fee statement was the best evidence of fair market value.

ASSIGNMENT OF ERROR NO. 9:

The Board of Tax Appeals' Decision and Order erroneously found that the Board of Education sustained their burden of proof even though the Board of Education failed to present any evidence before the Board of Revision or the Board of Tax Appeals to rebut the property owner's evidence that the transfer of the property as reflected on the conveyance fee statement was a sale-leaseback financing transaction entered into to provide the property owner with working capital.

ASSIGNMENT OF ERROR NO. 10:

The Board of Tax Appeals' Decision and Order erroneously found that the Board of Education sustained their burden of proof even though the Board of Education failed to present any evidence before the Board of Revision or the Board of Tax Appeals to rebut the property owner's evidence that the property was never listed or otherwise advertised for sale on the open market.

ASSIGNMENT OF ERROR NO. 11:

The Board of Tax Appeals' Decision and Order adopting the sale price of the sale-leaseback financing transaction as the fair market value of the property is unreasonable, unlawful and arbitrary because it rejected the expert testimony and evidence regarding the nature and circumstances of the sale.

ASSIGNMENT OF ERROR NO. 12:

The Board of Tax Appeals' Decision and Order adopting the sale price of the sale-leaseback financing transaction is unreasonable, unlawful and arbitrary because it ignores the competent and probative evidence provided by the property owner's appraiser concerning the fee simple value of the property.

ASSIGNMENT OF ERROR NO. 13:

The Board of Tax Appeals' vague and incomplete analysis and weighing of the evidence in the record divests the Ohio Supreme Court of the ability to review this case on appeal and as a result violates the property owner's right to due process and equal protection under the United States and Ohio Constitutions.

ASSIGNMENT OF ERROR NO. 14:

The Board of Tax Appeals' Decision and Order violates Article XII, Section 2 of the Ohio Constitution which requires that property must be taxed by uniform rule according to value.

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 Kevin J. Baxter, Esq., Erie County Prosecuting Attorney, 247 Columbus, Avenue, Suite 319, Sandusky, Ohio 44870 and Kelley A. Gorry, Esq., Rich & Gillis Law Group, LLC, 6400 Riverside Drive, Suite D, Dublin, Ohio 43017, Attorneys for Appellees Erie County Board of Revision and Erie County Auditor, Karrie M. Kalail, Esq. Britton, Smith, Peters & Kalail, Co, L.P.A., Three Summit Park Drive, Suite 400, Cleveland, Ohio 44131, Attorney for Appellee Perkins Local School District Board of Education, and Mike Dewine, Esq., Attorney General State of Ohio, James A. Rhodes State Office Tower, 30 East Broad Street, 14th Floor, Columbus, Ohio 43215, Attorney for Appellee Tax Commissioner of the State of Ohio, this 14th day of April, 2014.



Andrew M. Ferris (0065121)