

ORIGINAL

IN THE SUPREME COURT OF OHIO

CHESTER/83 LLC AND
V & V LAKESHORE LTD.

APPELLEES

v.

LORAIN COUNTY BOARD OF REVISION,
LORAIN COUNTY AUDITOR, ET AL.,

APPELLANTS

FILED

APR 28 2014

CLERK OF COURT
SUPREME COURT OF OHIO

No. 14-0655

ON APPEAL FROM THE
OHIO BOARD OF TAX APPEALS

BTA CASE NOS. 2010-3322,
2011-4183 AND 2011-4184
(REAL PROPERTY VALUATION)

NOTICE OF APPEAL OF APPELLANTS,
LORAIN COUNTY BOARD OF REVISION AND
LORAIN COUNTY AUDITOR

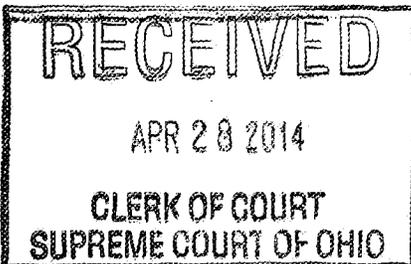
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NOTICE OF APPEAL OF THE LORAIN COUNTY AUDITOR
AND LORAIN COUNTY BOARD OF REVISION

Appellants Lorain County Auditor and Lorain County Board of Revision hereby give notice of its appeal as of right under 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 Nos. 2010-3322, 2011-4183, and 2011-4184 on April 4, 2014. A true copy of the Decision and Order of the Board being appealed is attached hereto as **Exhibit A** and incorporated herein by reference.

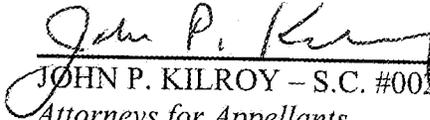
Appellants hereby complain of the following errors in the Decision and Order of the Board of Tax Appeals:

1. The Board of Tax Appeal erred in finding that a sale of the land, which is subject of this appeal, that took place in August 2007 is not recent to the tax lien date of either January 1, 2009 or January 1, 2010.
2. The Board of Tax Appeals erred in finding that V&V Lakeshore, Ltd. ("V&V") has standing to file an appeal, as V&V was not the owner on either the tax lien date or the date of filing the Board of Revision Complaint.
3. The Board of Tax Appeals erred in finding that the value conclusion in the property owner's appraisal, containing an unsupported and arbitrary 30% economic obsolescence factor, is reasonable and well supported.
4. The Board of Tax Appeals erred by ignoring the importance of the cost approach to valuation of a retail store that had been open for less than three months on the tax lien date.
5. The Board of Tax Appeals erred by finding that the property owner's appraisal evidence was reasonable and well supported despite a multitude of errors, inconsistencies, and unsupported assumptions.

6. The Board of Tax Appeals' decision is unreasonable and unlawful for the reason that the Board of Tax Appeals disregarded the testimony of the Chief Appraiser for the Lorain County Auditor.
7. The Board of Tax Appeals' decision is unreasonable and unlawful for the reason that its findings of fact and conclusions of law are against the manifest weight of the evidence.

Appellants request that the Supreme Court vacate the Board of Tax Appeals' decision and order the Board of Tax Appeals to reinstate the Lorain County Auditor's values for the 2009 and 2010 tax years.

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OHIO BOARD OF TAX APPEALS

Chester/83 LLC and V&V Lakeshore, Ltd.)	CASE NOS. 2010-3322,
)	2011-4183, and 2011-4184
Appellants,)	
)	(REAL PROPERTY TAX)
vs.)	
)	DECISION AND ORDER
Lorain County Board of Revision,)	
Lorain County Auditor, and Avon Local)	
School District Board of Education,)	
)	
Appellees.)	

APPEARANCES:

For the Appellants	-	Vorys, Sater, Seymour and Pease LLP Scott J. Ziance 52 East Gay Street P.O. Box 1008 Columbus, Ohio 43216-1008
For the County Appellees	-	Dennis P. Will Lorain County Prosecuting Attorney John P. Kilroy Assistant Prosecuting Attorney 225 Court Street, 3rd Floor Elyria, Ohio 44035
For the Appellee Board of Edn.	-	Stumphauzer, O'Toole, McLaughlin, McGlamery & Loughman Co., LPA Abraham Lieberman 5455 Detroit Road Sheffield Village, Ohio 44054

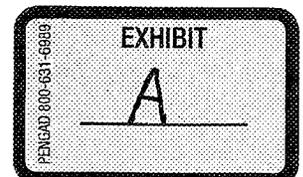
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 2014 APR - 8 A 10: 03
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 LORAIN COUNTY

Entered **APR 04 2014**

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

Appellants appeal decisions of the board of revision (“BOR”) which determined the value of the subject real property, parcel number 04-00-016-102-061, for tax year 2009, and parcel numbers 04-00-016-102-067 and 04-90-016-102-067, for tax year 2010.¹ This matter is now considered upon the notices of appeal,² the

¹ Counsel for the county appellees explained that, for tax year 2010, a tax increment financing (“TIF”) parcel was added to the property, resulting in the two parcel numbers, and counsel for the appellants noted that, in addition, the total acreage of the parcels changed from 8.040 acres in 2009 to 7.5 acres in 2010. Accordingly, we find that Chester’s 2010 complaint was not an improper second filing with an interim period under R.C. 5715.19, and deny the county appellees’ motion to dismiss with regard to



transcripts certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the parties' briefs.

The subject's total true value was initially assessed at \$13,918,000 for tax year 2009, and \$13,642,900 for tax year 2010. For tax year 2009, a decrease complaint was filed by Chester/83 LLC ("Chester") seeking a reduction in value to \$10,000,000; the board of education ("BOE") filed a countercomplaint seeking to retain the auditor's valuation. For tax year 2010, Chester filed a complaint seeking a decrease in value to \$9,100,000; the BOE again filed a countercomplaint to retain the auditor's valuation. The BOR issued a decision for each tax year maintaining the auditor's original valuation, and the present appeals ensued.

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

Footnote contd.-----

tax year 2010. See, e.g., *Dionisopoulus v. Cuyahoga Cty. Bd. of Revision* (May 15, 2012), BTA Nos. 2010-Q-991, et seq., unreported.

² At the outset, we must address the county appellees' oral motion to dismiss BTA No. 2011-4183, filed by V&V Lakeshore, Ltd. ("V&V"). Counsel for the county appellees argued at this board's hearing that, because V&V did not own the subject property on tax lien date 2010, nor as of the deadline for filing a tax year 2010 complaint, it lacks standing to appeal the BOR's decision with regard to 2010. The notice of appeal docketed as BTA No. 2011-4183 indicates on its face that the subject property "sold from Chester/83 LLC to V & V Lakeshore, Ltd. on August 24, 2011." As the Supreme Court recently noted in *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision*, Slip Opinion No. 2014-Ohio-104, "[t]he current owner, not a former owner, has the primary and substantial interest in the valuation proceeding. It is the current owner's interest in the property that is subject to the tax lien imposed by R.C. 323.11." *Id.* at ¶23. See, also, *Columbus Apartments Assoc. v. Bd. of Revision* (1981), 67 Ohio St.2d 85. Importantly, the values determined by the BOR for tax year 2010 may have carried forward until 2012, the year of the sexennial reappraisal in Lorain County. See *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468. Moreover, the parties do not dispute that the subject property was subject to a ground lease, under which the improvements were owned by V&V, the tenant. See *Volibar Realty Co. v. Cuyahoga Cty. Bd. of Revision* (Jan. 6, 2006), BTA Nos. 2003-T-633, et al., unreported; R.C. 5717.01. Accordingly, we find V&V properly had standing to file the notice of appeal, and the motion to dismiss is hereby denied.

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, the subject property has not recently sold in an arm’s-length transaction.³ We therefore turn to the parties’ appraisal evidence. See *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62. Chester presented the reports and testimony of Samuel D. Koon, MAI,⁴ who opined a value of \$10,000,000 as of January 1, 2009, and \$9,100,000 as of January 1, 2010, using the cost, income capitalization, and sales comparison approaches to value.⁵ The county appellees presented the testimony of Thomas J. Johnson, chief appraiser for the Lorain County Auditor, to rebut the economic obsolescence factor used by Mr. Koon in his cost approach to value.⁶ Upon consideration of the evidence presented, we find Mr. Koon’s value conclusions are reasonable and well supported.

It is therefore the order of this board that the subject parcels’ true and taxable values, as of January 1, 2009, were as follows:

Parcel no. 04-00-016-102-061

	TRUE VALUE	TAXABLE VALUE
Total	\$ 10,000,000	\$ 3,500,000

³ The subject vacant land sold in August 2007; however, the sale is not recent to either tax lien date given the improvements added to the parcel in 2008. While it appears that the subject property did sell in August 2011 to V&V, no documentation of this sale was presented, and none of the parties have argued for adoption of the August 2011 sale price as the value of the subject parcels.

⁴ At the BOR hearing on its tax year 2009 complaint, Chester presented the appraisal report and testimony of Curtis P. Hannah, MAI, who opined a value of \$5,750,000. It no longer relies upon this evidence as the basis for its claimed value adjustment.

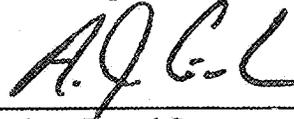
⁵ The county appellees objected to the admission of a January 3, 2013 letter from Mr. Koon to Chester’s counsel further explaining the economic obsolescence factor used in his appraisal, under R.C. 5715.19(G). The objection is hereby overruled, as the document was clearly not in existence at the time of the BOR hearing, and, further, serves merely to supplement Mr. Koon’s extensive testimony on the issue.

⁶ In addition, the county appellees presented a conveyance fee statement evidencing the transfer reflected in Mr. Koon’s appraisal reports as comparable land sale 3, and the board’s attorney examiner overruled Chester’s objection to its admission. Chester has again objected, in its brief, to Exhibit B. We find no error in the attorney examiner’s ruling and again overrule the objection.

As of January 1, 2010, it is the order of this board that the total value of parcel numbers 04-00-016-102-061 and 04-90-016-102-061 was \$9,100,000; however, because the property appears to be subject to a TIF for that tax year, we hereby remand this matter to the Lorain County Board of Revision with instructions to allocate value among the parcels per the TIF agreement.

It is the order of the Board of Tax Appeals that the Lorain County Auditor list and assess the subject parcels 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 handwritten signature in black ink, appearing to read "A.J. Groeber", written in a cursive style.

A.J. Groeber, Board Secretary

PROOF OF SERVICE

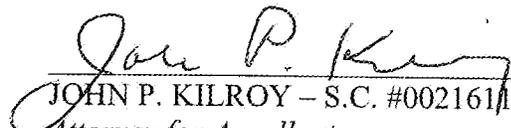
I hereby certify that a copy of this *Notice of Appeal* was sent this 23 day of April, 2014, by certified mail, return receipt requested, to:

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