ORIGINAL

IN THE SUPREME COURT OF OHIO

770 West Broad Street AGA, LLC and WBS Columbus, LLC, Appellees, vs. Board of Education of the Columbus City Schools Appellant. and Franklin County Board of Revision and Franklin County Auditor, Appellees;	Case No. 14-0839 On Appeal from the Ohio Board of Tax Appeals BTA Case Nos. 2012-3902 and 2012-3903

NOTICE OF APPEAL OF 770 WEST BROAD STREET AGA, LLC AND WBS COLUMBUS, LLC

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FILED
MAY 21 2014
CLERK OF COURT
SUPREME COURT OF OHIO

Appellants before this Court (although Appellees below), 770 West Broad Street AGA, LLC and WBS Columbus, LLC, owners for the relevant years of the property whose tax valuation is at issue in this appeal, hereby give notice of their appeal as of right, pursuant to R.C. 5717.04, from a Decision and Order of the Ohio Board of Tax Appeals, journalized and entered on April 21, 2014, that reversed a value determination by the Franklin County Board of Revision and reinstated the value originally established by the Franklin County Auditor for the property and tax years at issue. A true and accurate copy of this Decision and Order is attached as Exhibit A.

Appellants complain of the following errors:

1. The decision of the Board of Tax Appeals is unreasonable and unlawful.

2. The Board of Tax Appeals erred as a matter of law in not placing upon the party appealing to the Board of Tax Appeals from a decision of the Franklin County Board of Revision the burden of proving by competent and probative evidence that the taxable value established by the said Board of Revision for the tax years at issue was incorrect.

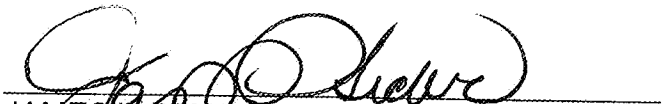
3. The Board of Tax Appeals erred as a matter of law in reversing the value established by the Board of Revision and substituting the value originally established by the County Auditor even though the record contains sufficient evidence for the Board of Tax Appeals to make its own independent judgment of value.

4. The Board of Tax Appeals erred as a matter of law, and rendered a decision that was not supported by competent and probative evidence, when it reversed the value established by the Board of Revision and reinstated the value originally

established by the County Auditor, even though the only evidence on the record supported the value established by the Board of Revision.

Because of the above errors by the Board of Tax Appeals, Appellants ask that the Decision and Order of the Board of Tax Appeals be reversed, and that the values established by the Franklin County Board of Revision be reinstated for the tax years on appeal.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of May, 2014, a true copy of the foregoing Notice of Appeal was served by certified mail upon the following:

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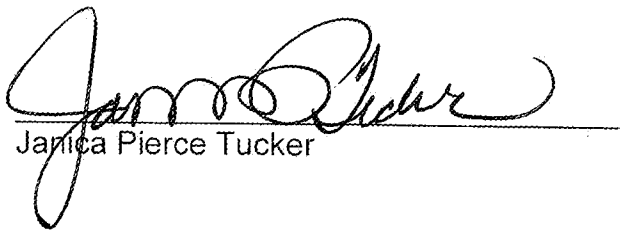

Janica Pierce Tucker

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OHIO BOARD OF TAX APPEALS

Board of Education of the Columbus City Schools,	)	CASE NOS. 2012-3902 and 2012-3903
Appellant,	)	(REAL PROPERTY TAX)
vs.	)	DECISION AND ORDER
Franklin County Board of Revision, Franklin County Auditor, 770 West Broad AGA, LLC, and WBS Columbus, LLC,	)	
Appellees.	)	

APPEARANCES:

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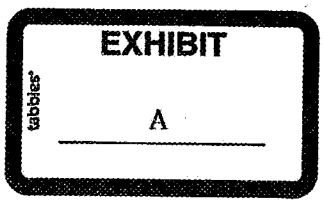
Entered APR 21 2014

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

Appellant appeals decisions of the Franklin County Board of Revision ("BOR") which determined the taxable value of the subject property, comprising thirty-two parcels for tax years 2009 and 2010, and eighteen parcels for tax year 2011. These matters are now considered upon the notices of appeal, the statutory transcripts ("S.T.") certified to this board by the BOR, the record of



this board's hearing ("H.R."), and the legal argument of the appellant and property owners.

For tax year 2009, the auditor assessed the subject property, a single-tenant office building, at a total true value of $6,735,800, at a total true value of $6,697,600 for tax year 2010, and at a value of $7,447,000 for tax year 2011. For tax year 2009, 770 West Broad AGA LLC ("770 W. Broad"), the property owner at the time, filed a complaint with the BOR requesting that the property's total true value be decreased to $4,050,000 because "[c]urrent value is not consistent with fair market value based on current trends and comparable properties." S.T., Ex. 1. The complaint indicated that the property had transferred on February 21, 2008 for $4,000,000. Id. It also noted that between March and June of 2008, $1,850,000 in improvements were completed, which included "demolition." Id. For tax year 2011, WBS Columbus, LLC ("WBS"), the property owner as of that date, filed a complaint requested that the property's total true value be decreased to $1,475,000 due to "[m]arket conditions, vacancy, purchase of Note in Default is indicative of value." Id. The complaint also indicated that the property transferred on November 10, 2011 for $1,450,000. Id. The appellant filed a countercomplaint for each year, advocating for the retention of the auditor's values. S.T., Ex. 2.

The BOR held one hearing for both tax years at issue. S.T., Ex. 9. At that hearing, the property owners presented the testimony of Michael Weisz, partner of both 770 West Broad and WBS. Id. Weisz testified that the 2008 transfer was a "package transaction" whereby 770 West Broad negotiated the price

of approximately $20 million for three buildings, $4 million of which was allocated to the subject property. Id. He then explained that between the purchase and January 1, 2009, $1,850,000 of improvements were made "to make it ready to lease to the state."[1] Id. The property owners then presented the testimony and report of Thomas D. Sprout, MAI, CPA, who in relying primarily upon the income approach to value, opined a total true value of the subject of $1,635,000 for tax year 2009 and $1,620,000 for tax year 2011.[2] S.T., Exs. 6 and 9. Sprout testified that the subject is "a highly risky investment," that he utilized actual rents for the subject because they were the market rents, and that he did not consider the 2008 sale because he was told that was an allocation. S.T., Ex. 9. The appellant presented the deed and conveyance fee statement, evidencing the transfer of thirty-two parcels for $4,000,000 in February 2008. S.T., Ex. 6. After consideration of the testimony and evidence, for tax years 2009 and 2010, the BOR issued a decision accepting the "arm's-length sale of the thirty-two parcels as the price" for those years. S.T., Ex. 9. For tax year 2011, the BOR issued a decision decreasing the total true value of the eighteen parcels at issue to "$1,620,000, as determined by Sprout." Id. The present appeals ensued.

At the hearing before this board, the appellant posited that sale price of $4,000,000 plus the $1,850,000 worth of improvements was the value of the

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[1] Weisz also testified that although the lease with the state of Ohio did not commence until July, the lease was in place when the property was purchased. He stated that the lease was contingent on the improvements made. S.T., Ex. 9.

[2] It is important to note that Sprout's report included only eighteen parcels for tax year 2009, despite the fact that thirty-two parcels were at issue.

subject for both tax years while the property owner again presented the testimony of Sprout, whose testimony focused on the effects of the recession in 2008 as well as the consequences of the state contract.

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. As recognized by the Supreme Court, temporal proximity of a sale to a tax lien date is not the only factor affecting its utility in establishing value. Rather, "recency 'encompasses all factors that would, by changing with the passage of time, affect the value of the property' *** [and that] recency factors include 'changes that have occurred in the market.'" *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio-5932 at ¶32. (Citations omitted.) One such factor that can include a change can involve a material change to the property itself.

While various arguments are made challenging the utility of the sale, it is undisputed that the property transferred in February 2008 for $4,000,000 and that between the sale and tax lien date $1,850,000 in improvements were made. While the record lacks specificity regarding the improvements, the record does indicate that the improvements were made specifically for the tenant, the state of Ohio. Additionally, the face of the complaint indicates that demolition occurred. Based upon this information, we find the $1,850,000 in improvements materially changed the property, so that the $4,000,000 sale price is unreliable as of both tax lien dates. See, e.g., *Bailey v. Hamilton Cty. Bd. of Revision* (Feb. 28, 2013), BTA No. 2012-L-2146, unreported (where this board, in finding a sale remote, held a material change occurred between the sale and the tax lien date due to the significant testimony focused on the efforts/cost in making the property habitable).

We likewise find that the sale price plus the value of the improvements is not the value of the property as of either tax lien date. As we stated in *Mason City School District v. Warren Cty. Bd. of Revision* (Apr. 1, 2005), BTA No. 2003-T-1355, unreported, at 9, remanded for settlement, 106 Ohio St. 3d 1517, 2005-Ohio-4857, "Simply adding all of the costs, however, does not necessarily reflect the value of an improvement. In determining the value of property for the purposes of taxation, the assessing body must take into consideration all factors which affect the value of the property.' *The B.F. Keith Columbus Co. v. Franklin Cty. Bd. of Revision* (1947), 148 Ohio St. 253, at paragraph one of the syllabus. Factors such as depreciation, deficiencies,

superadequacies, and other forms of obsolescence may be present." See, e.g., *Gen. Motors Corp. v. Cuyahoga Cty. Bd. of Revision* (1996), 74 Ohio St.3d 513 (dollar for dollar additions are no different than dollar for dollar deductions); *Hotel Statler v. Cuyahoga* (1997), 79 Ohio St.3d 299 (rejecting the presence of a one-to-one relationship between cost and value when there exists no evidence of such a relationship).

Having no sale upon which to rely,[3] we must now turn to the appraisal evidence submitted by the property owners. We are unpersuaded by Sprout's opinion of value for both tax years at issue.[4] Through both his testimony and statements in his report, Sprout emphasized the detrimental effects of the recession and the alleged lack of desirability of the state of Ohio as the tenant. Without providing supporting evidence, Sprout concluded that not only did these factors exist, but they had a negative effect on the value of the subject. See, generally, *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059, at ¶26, ("Mere speculation is not evidence."). We find that Sprout improperly relied on these contentions and that,

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[3] We also recognized that the property transferred in November 2011 to WBS via deed in lieu of foreclosure. However, we cannot utilize this transfer to value the subject as of the tax lien dates at issue as the Supreme Court has clearly stated that foreclosure sales are not voluntary. See *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision, et al.*, 127 Ohio St.3d 63, 2010-Ohio-4907.

[4] For tax year 2009, Sprout specifically noted in his testimony and report that his report addressed only eighteen parcels while the 2009 complaint encompassed the thirty-two parcels transferred for $4,000,000 in 2008. For the reasons discussed herein, we decline to accept his value determination for even that portion of the parcels at issue for that year. When parties rely on an appraiser's opinion of value, this board may accept all, part, or none of that appraiser's opinion. *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155.

in turn, they improperly affected his ultimate value conclusions. For example, Sprout relied upon those unsupported assertions in determining a 12% capitalization rate for his income approach, despite this being at the very top of the range for the subject. Additionally, this board has stated "[r]eal property values, even within a small geographic area, may vary greatly due to a number of factors and we are unwilling to conclude that a general economic situation must necessarily impact the values of all real property equally." *Myles v. Cuyahoga Cty. Bd. of Revision* (Jan. 29, 2013), BTA No. 2012-L-2358, unreported at 6. See, also, *Bell v. Hamilton Cty. Bd. of Revision* (Aug. 27, 2004), BTA No. 2003-T-1087, unreported (rejecting claim that the terrorist events of September 11, 2001 had an obvious negative economic impact on the value of real property).

Therefore, there is no evidence upon which this board may determine value. Additionally, and for the reasons discussed, we find the BOR's decisions to reduce the total true value of the subject for each tax year improper. See, *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision* (2011), 130 Ohio St.3d 291, 2011-Ohio-5078, at ¶21, which held:

> "It is true that the *absence* of sufficient evidence requires the BTA to reverse a reduction or increase ordered by a board of revision. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, 566-567 ***." (Emphasis sic.)

Accordingly, based upon the record and discussion herein, we determine that the value of the subject property as of the effective tax lien dates, were as originally determined by the auditor as follows:

As of January 1, 2009:

TRUE VALUE[5]	TAXABLE VALUE
$6,735,800	$2,357,530

As of January 1, 2010:

TRUE VALUE[6]	TAXABLE VALUE
$6,697,600	$2,344,160

As of January 1, 2011:

TRUE VALUE[7]	TAXABLE VALUE
$7,447,000	$2,606,450

It is therefore the order of this board that the Franklin County Auditor list and to assess the same in accordance therewith as provided by law.

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[5] This value is the total value of the following thirty-two parcels combined: 010-010337-00, 010-002600-00, 010-006547-00, 010-010336-00, 010-010959-00, 010-016817-00, 010-046802-00, 010-047441-00, 010-047998-00, 010-049738-00, 010-054947-00, 010-000446-00, 010-043012-00, 010-043013-00, 010-044421-00, 010-045265-00, 010-045587-00, 010-025009-00, 010-027813-00, 010-032888-00, 010-043011-00, 010-017534-00, 010-019504-00, 010-020110-00, 010-022257-00, 010-025008-00, 010-055952-00, 010-066587-00, 010-066602-00, 010-094926-00, 010-232286-00, 010-027205-00

[6] See fn. 5, infra.

[7] This value is the total value of the following eighteen parcels combined: 010-016817-00, 010-025009-00, 010-000446-00, 010-010336-00, 010-010959-00, 010-020110-00, 010-002600-00, 010-017534-00, 010-022257-00, 010-025008-00, 010-027813-00, 010-047441-00, 010-047998-00, 010-049738-00, 010-055952-00, 010-066587-00, 010-066602-00, 010-094926-00

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