

ORIGINAL

IN THE SUPREME COURT OF OHIO

THE METAMORA ELEVATOR  
COMPANY, :

Appellee, :

v. :

FULTON COUNTY AUDITOR AND  
FULTON COUNTY BOARD OF  
REVISION, :

Appellants, :

and :

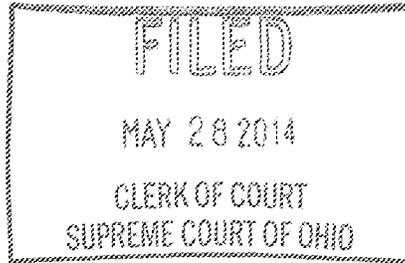
TAX COMMISSIONER OF OHIO, :

Appellee. :

14-0874

Case No. \_\_\_\_\_

Appeal from the Ohio Board of Tax Appeals  
BTA Case No. 2011-1854

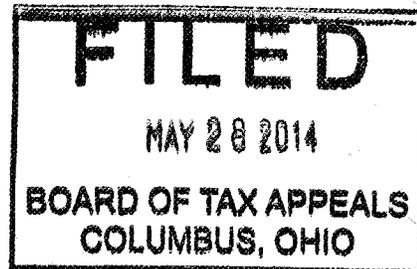


NOTICE OF APPEAL OF THE FULTON COUNTY AUDITOR  
AND FULTON COUNTY BOARD OF REVISION

Kelley A. Gorry (0079210)  
COUNSEL OF RECORD  
James R. Gorry (0032461)  
Rich & Gillis Law Group, LLC  
6400 Riverside Drive, Suite D  
Dublin, OH 43017  
PH: (614) 228-5822  
FAX: (614) 540-7476  
[kgorry@richgillislawgroup.com](mailto:kgorry@richgillislawgroup.com)  
*Attorneys for Appellants Fulton County  
Auditor and Fulton County Board of  
Revision*

Jonathan T. Brollier (0081172)  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215  
PH: (614) 227-2300  
FAX: (614) 227-2390  
*Attorney for Appellee The Metamora  
Elevator Company*

The Honorable Mike DeWine (0009181)  
Ohio Attorney General  
30 East Broad Street, 17<sup>th</sup> Floor  
Columbus, OH 43215  
PH: (614) 466-4986  
*Attorney for Appellee Ohio Tax Commissioner*





Respectfully Submitted,



Kelley A. Gorry (0079210)  
James R. Gorry (0032461)  
Rich & Gillis Law Group, LLC  
6400 Riverside Drive, Suite D  
Dublin, OH 43017  
PH: (614) 228-5822  
FAX: (614) 540-7476  
[kgorry@richgillislawgroup.com](mailto:kgorry@richgillislawgroup.com)

**EXHIBIT A – STATEMENT OF ERRORS**

The decision of the Ohio Board of Tax Appeals (the “BTA”) was unreasonable and unlawful for the following reasons:

- (1) The BTA’s decision classifying grain bins for the storage of grain in a grain elevator as personal property was unreasonable and unlawful.
- (2) The BTA’s decision violates the provisions of Article XII, Section 2 of the Ohio Constitution in that the grain storage bins in question are “improvements” on the land under such section and must be taxed as real property, notwithstanding any statutory provisions that might be to the contrary. Furthermore, all parts of R.C. 5701.02 must be read in light of the constitutional provisions that define real property.
- (3) The BTA erred in failing to hold that the grain storage bins in question were not storage silos for agricultural products as set forth in R.C. 5701.02(E) and thus were real property.
- (4) The BTA erred in failing to hold that the grain storage bins in question were not either fixtures or structures on the land as set forth in R.C. 5701.02(C) and (E) and thus were real property. Grain storage bins that are bolted to the ground are thereby “affixed” to the land and are fixtures, and the grain storage bins were permanent fabrications and thus structures on the land, that constitute real property and constitutional “improvements” on the land.

(5) The BTA's decision ignores this Court's holding in *Bobb Brothers v. Bd. of Revision of Highland Cty.*, 45 Ohio St.2d 573 (1976).

(6) The BTA's interpretation of R.C. 5701.02 violates ordinary principles of statutory construction.

(7) The BTA's interpretation of R.C. 5701.02 and 5701.03 is inconsistent with the legislative history of such sections.

(8) The BTA erred in impliedly holding that a grain bin does not constitute real property because it can be moved.

(9) The BTA erred in interpreting the word "permanent" as it appears in both R.C. 5701.02(C) and (E).

(10) The BTA's analysis under the *Funtime* test is erroneous and unlawful. *See Funtime, Inc. v. Wilkins*, 105 Ohio St. 3d 74, 2004-Ohio-6890, 822 N.E.2d 781 (2004).

(11) The BTA erred in concluding that the Tax Commissioner's Information Release supports its determination that the grain bins are personal property. *See Tax Commissioner's Information Release PP 2007-01 and RP 2007-1(30)*.

(12) The BTA erred in holding that the use of gain storage bins provides a benefit to any business conducted by any occupant on the premises, rather than providing a benefit to the land itself the use of which is directly and essentially connected to the storage of grain upon the land. Grain storage bins are not business fixtures as defined in R.C. 5701.03(B).

PROOF OF SERVICE ON BOARD OF TAX APPEALS

I hereby certify that a true and complete copy of the foregoing notice of appeal was served upon the Clerk of the Board of Tax Appeals as evidenced by its filing stamp set forth hereon.

  
Kelley A. Gorry (0079210)

CERTIFICATE OF SERVICE BY CERTIFIED MAIL

I hereby certify that a true and complete copy of the foregoing notice of appeal was served by certified mail, postage prepaid, with return receipt requested, this 29<sup>th</sup> day of May, 2014, upon:

Jonathan T. Brollier, Esq.  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, OH 43215  
*Attorney for Appellee The  
Metamora Elevator Company*

The Honorable Mike DeWine, Esq.  
Ohio Attorney General  
30 East Broad Street, 17<sup>th</sup> Floor  
Columbus, OH 43215  
*Attorney for Appellee Ohio Tax Commissioner*

  
Kelley A. Gorry (0079210)

IN THE SUPREME COURT OF OHIO

THE METAMORA ELEVATOR COMPANY,

Appellee,

v.

FULTON COUNTY AUDITOR AND FULTON COUNTY BOARD OF REVISION,

Appellants,

and

TAX COMMISSIONER OF OHIO,

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Case No. \_\_\_\_\_

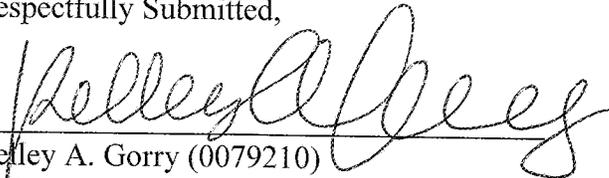
Appeal from the Ohio Board of Tax Appeals  
BTA Case No. 2011-1854

REQUEST TO CERTIFY ORIGINAL PAPERS TO THE SUPREME COURT OF OHIO

TO: The Clerk of the Ohio Board of Tax Appeals:

The Appellants, who have filed a notice of appeal with the Supreme Court of Ohio, make this written demand upon the Clerk and this Board to certify the record of its proceedings and the original papers of this Board and statutory transcript of the Board of Revision in the case of *The Metamora Elevator Company v. Fulton Cty. Bd. of Revision, et al.*, BTA Case No. 2011-1854, rendered on May 2, 2014, to the Supreme Court of Ohio within 30 days of service hereof as set forth in R.C. 5717.04.

Respectfully Submitted,



Kelley A. Gorry (0079210)  
Rich & Gillis Law Group, LLC  
6400 Riverside Drive, Suite D  
Dublin, OH 43017  
PH: (614) 228-5822  
FAX: (614) 540-7476  
*Attorney for Appellants Fulton County  
Auditor and Fulton Board of Revision*

**OHIO BOARD OF TAX APPEALS**

The Metamore Elevator Company,	)	CASE NO(S). 2011-1854
	)	
Appellant(s),	)	(REAL PROPERTY TAX)
	)	
vs.	)	DECISION AND ORDER
	)	
Fulton County Board of Revision, et al.,	)	
	)	
Appellees.	)	

**APPEARANCES:**

For the Appellant(s)	-	Bricker & Eckler LLP Jonathan T. Brollier 100 South Third Street Columbus, Ohio 43215
For the County Appellees	-	Scott Haselman Fulton County Prosecuting Attorney Kelley A. Gorry Special Prosecuting Attorney Rich & Gillis Law Group, LLC 6400 Riverside Drive, Suite D Dublin, Ohio 43017

Entered **MAY 02 2014**

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

Appellant(s) appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number(s) 01-000308-00.000.<sup>1</sup> This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the written legal arguments of the parties. The subject's total true value was initially assessed at \$1,833,600. A decrease complaint was filed with the BOR seeking a reduction in value to \$1,435,970.

At the BOR hearing, Daniel Dembowski, a representative of the property owner,<sup>2</sup> and its counsel, argued that the corrugated storage bins located at the subject are being improperly taxed as real property when, in fact, they are business fixtures and thus personal property. The property owner made a distinction between silos, which were described as concrete structures,<sup>3</sup> and bins, which are not permanent structures. The property owner argued that the grain bins were business fixtures as defined by R.C. 5701.03(B) because they were modular, not permanent, they can be removed and sold, and they can be disassembled for repair and subsequently reassembled. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal(s).

<sup>1</sup> While the appellant challenged the value of two parcels before the BOR and thus its evidence referenced two parcels, the appellant has made clear on appeal that it is only challenging the value of parcel 01-000308-00.000.

<sup>2</sup> Due to the poor quality of the BOR recording, Mr. Dembowski's relationship to the property owner is unclear.

<sup>3</sup> At the BOR hearing, the property owner clearly indicated that it was not challenging the value of the silos.

On appeal, the appellant, through written argument, argues that the storage bins located on the subject property meet the definition of personal property as defined by R.C. 5701.03 and the Supreme Court's ruling in *Funtime, Inc. v. Wilkins* (2004), 105 Ohio St.3d 74. Ultimately, the appellant argues that "[B]ecause Metamora's mobile, modular, metal storage bins are not permanently affixed to the Subject Property, and because they benefit the business conducted on the land, rather than the land itself, the grain storage bins do not constitute real property." Appellant's Merit Brief at 9. In opposition, the county appellees argue that both the Supreme Court and this board have long held that grain storage bins are real property and that the grain storage bins are not business fixtures under the test articulated in *Funtime*, supra. See, generally, County Appellees' Merit Brief. Resolution of the instant matter must result in interpreting the statutory framework for distinguishing real and personal property.

It is undisputed by the parties that the Supreme Court's holding in *Funtime*, supra, guides our analysis of the two statutes at issue, i.e., R.C. 5701.02 and R.C. 5701.03.<sup>4</sup> In that case, the court articulated very specific instructions when reading the statutes:

"first, determine whether the item meets the requirements of one of the statutory definitions of real property set forth in R.C. 5701.02. If the item does not, then it is personal property. If the item fits a statutory definition of real property in R.C. 5701.02, it is real property unless it is 'otherwise specified' in R.C. 5701.03. If an item is 'otherwise specified' under R.C. 5701.03, it is personal property.

Thus, we must first determine whether the grain storage bins meet one of the statutory definitions for real property set forth in 5701.02. R.C. 5701.02 states in pertinent part as follows:<sup>5</sup>

"Real property,' 'realty,' and 'land' include land itself \*\*\* with all things contained therein, and, *unless otherwise specified in this section or section 5701.03 of the Revised Code*, all buildings, structures, improvements, and fixtures of whatever kind on the land, and all rights and privileges belonging or appertaining thereto.'

\*\*\*\*

"(C) 'Fixture' means an item of tangible personal property that has become *permanently* attached or affixed to the land or to a building, structure, or improvement, and that primarily benefits the realty and not the business, if any, conducted by the occupant on the premises.

"(E) 'Structure' means a *permanent* fabrication or construction, other than a building, that is attached or affixed to land, and that increases or enhances utilization or enjoyment of the land. 'Structure' includes, but is not limited to, bridges, trestles, dams, storage silos for agricultural products, fences, and walls." (Emphasis added).

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<sup>4</sup> As previously mentioned, the county appellees do not dispute that *Funtime* guides our analysis. Rather, the county argues that the subject does not meet the test articulated in *Funtime*.

<sup>5</sup> While the statute specifically defines other terms, we find that only the terms listed in this decision could apply to the grain bins.

Following the court's two-step analysis, we find that the subject does not meet one of the definitions of real property set forth in 5701.02. We find it significant that every definition includes the term "permanent." In the instant appeal, we find that the record evidences that the grain storage bins at issue are not permanent, but temporary structures. Unlike the silos, which are concrete structures that the appellant concedes are permanent, the storage bins are made of corrugated metal and are bolted to the ground, which allows for easier removal, further exhibiting their temporary nature. The construction of the grain bins themselves illustrates that they are not intended to exist for an indefinite period of time.<sup>6</sup> Therefore, we find that the grain storage bins do not meet the definitions of real property set forth in R.C. 5701.02 and have thus been improperly classified and taxed as such.<sup>7</sup>

Accordingly, based upon our review of the record, we find that the grain bins at issue constitute personal property and should not be assessed as real property by the county auditor. It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2009, were as follows:

TRUE VALUE	TAXABLE VALUE
\$738,240 <sup>8</sup>	\$258,380

It is the order of the Board of Tax Appeals that the subject property be assessed in conformity with this decision and order.

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<sup>6</sup> This decision is further supported by the Tax Commissioner's classification of "portable grain storage bins regardless of size" as personal property. See PP 2007-01 and RP 2007-01 - Classification of Certain Business Assets as Real or Personal Property - Issued September 2007; Revised January 2008.

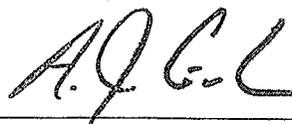
<sup>7</sup> Even if we had found that the storage grain bins were real property under R.C. 5701.02, we would have found that they meet the definition of "business fixture" under R.C. 5701.03(B) because it is a category specifically enumerated in the statute. R.C. 5701.03 states in pertinent part:

"(B) 'Business fixture' means an item of tangible personal property that has become permanently attached or affixed to the land or to a building, structure, or improvement, and that primarily benefits the business conducted by the occupant on the premises and not the realty. 'Business fixture' includes, but is not limited to, machinery, equipment, signs, storage bins and tanks, whether above or below ground, and broadcasting, transportation, transmission, and distribution systems, whether above or below ground\*\*\*." (Emphasis added).

We also find it significant that R.C. 5701.02 defines "structure" to include storage silos, a term clearly differentiated from the term "storage bins" used in 5701.03. It is clear from this that the legislature had a different intent with regard to the treatment of silos as opposed to the treatment of bins.

<sup>8</sup> This calculation was derived from the auditor's original value for the subject of \$1,833,600 less the auditor's value for the storage bins of \$1,095,360.

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 cursive script, appearing to read "A.J. Groeber".

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A.J. Groeber, Board Secretary