

IN THE SUPREME COURT OF OHIO

ORIGINAL

Dayton-Point West Real Estate Assoc., LLC :

14-0927

Appellee : Case No. _____

and :

Board of Education of the Kettering
City Schools, :

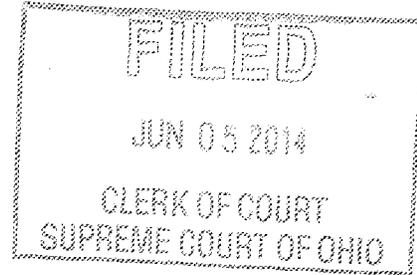
Appeal from the Ohio Board of
Tax Appeals - Case Nos. 2011-4472
and 2011-4478

Appellant, :

v. :

Montgomery County Board of Revision,
Montgomery County Auditor, :

Appellees. :



NOTICE OF APPEAL OF THE BOARD OF EDUCATION OF THE
KETTERING CITY SCHOOLS

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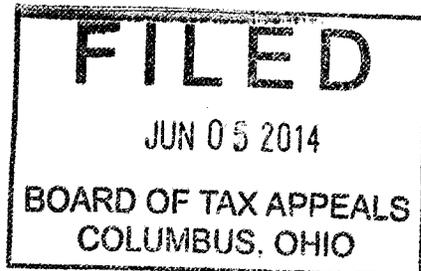
Attorney for Appellee Dayton-Point West Real
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Board of Education of the
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Attorneys for Appellees County Auditor
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HAND DELIVERED

IN THE SUPREME COURT OF OHIO

Dayton-Point West Real Estate Assoc., LLC :

Appellee : Case No. _____

and :

Board of Education of the Kettering : Appeal from the Ohio Board of
City Schools, : Tax Appeals - Case Nos. 2011-4472
: and 2011-4478

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Montgomery County Auditor, :

Appellees.

NOTICE OF APPEAL OF THE BOARD OF EDUCATION OF THE
KETTERING CITY SCHOOLS

Now comes the Appellant, the Board of Education of the Kettering City School District, and gives notice of appeal to the Supreme Court of Ohio from the decision of the Ohio Board of Tax Appeals in the case of *Dayton-Point West Real Estate Associates, LLC and Board of Education of the Kettering City Schools v. Montgomery County Board of Revision, et al.* BTA Case No. 2011-4472 and 2011-4478, rendered on May 6, 2014, a copy of which is attached hereto as Exhibit B. The Errors complained of therein are set forth herein as Exhibit A.

Respectfully submitted,



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Attorneys for Appellant
Board of Education of the Kettering City
School District

EXHIBIT A - STATEMENT OF ERRORS

(1) The Ohio Board of Tax Appeals (BTA) erred in holding that the appraisals were competent and probative evidence of value merely because: (1) it “provides opinions of value as of tax lien date”; (2) “was prepared for tax valuation purposes;” and (3) was “attested to by a qualified expert.”

(2) The BTA erred by failing to conduct a de novo review of the evidence in the record;

(3) The BTA erred by failing to specifically state the facts and figures upon which its decision is based.

(4) The BTA erred by failing to independently determine the true value of the subject property.

(5) The BTA erred by accepting appraisals for which the appraiser testified that he looked for and utilized “substandard and unstabilized” properties for his comparables and which failed to utilize the recent sale of the subject property.

(6) The BTA erred in determining that the June 15, 2007 arm’s-length sale of the subject property was “too remote from the tax lien date” of January 1, 2011 when it accepted Dayton-Point West Real Estate Associates, LLC’s appraisals which used an older sale with no adjustment for market conditions and a sale occurring only 6 month after the sale of the subject property using a nominal 10% adjustment for market conditions.

(7) The BTA erred in allowing the testimony of Mr. Jack Ross and Mr. Anthony Lehman in violation of R.C. 5715.19(G) without a showing of good cause as to why their testimony was not presented to the board of revision below.

(8) The BTA erred by failing to specifically address any of the arguments presented by the Board of Education that demonstrated the flaws in and insufficiency of the evidence presented by the property owners.

(9) The BTA erred when it merely “acknowledge[d] the arguments made by the appellant” and then deferred to Dayton-Point West Real Estate Associates, LLC’s appraiser’s “wide variety of subjective judgments” for which there was no detail or justification given.

(10) The BTA erred by failing to accept the Auditor’s original value as the default value of the subject property.

(11) The BTA erred in holding that Dayton-Point West Real Estate Associates, LLC’s sustained its burden of proof before the Montgomery County Board of Revision to prove that the subject property was over-valued and further failed to prove the true value of the subject property.

PROOF OF SERVICE ON THE OHIO 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 Ohio Board of Tax Appeals, as is evidenced by its filing stamp set forth hereon.



Mark Gillis (0066908)
Attorney for Appellant

CERTIFICATE OF SERVICE BY CERTIFIED MAIL

I hereby certify that a true and complete copy of the foregoing notice of appeal was served on the following by certified mail, return receipt requested, with postage prepaid, this 5th day of June, 2014.

Ryan J. Gibbs
The Gibbs Firm, LPA
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Cincinnati, Ohio 45219

Mike Dewine
Appellee Ohio Attorney General
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Ron O'Brien
Franklin County Prosecutor
William J. Stehle, Esq.
Assistant County Prosecutor
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Columbus, Ohio 43215



Mark Gillis (0066908)
Attorney for Appellant

IN THE SUPREME COURT OF OHIO

Dayton-Point West Real Estate Assoc., LLC :

Appellee : Case No. _____

and :

Board of Education of the Kettering : Appeal from the Ohio Board of
City Schools, : Tax Appeals - Case Nos. 2011-4472
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Appellant, :

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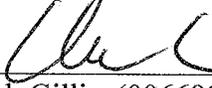
Appellees.

REQUEST TO CERTIFY ORIGINAL PAPERS TO THE SUPREME COURT OF OHIO

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

The Appellant, who has filed a notice of appeal with the Supreme Court, makes 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 *Dayton-Point West Real Estate Associates, LLC and Board of Education of the Kettering City Schools v. Montgomery County Board of Revision, et al.* BTA Case No. 2011-4472 and 2011-4478, rendered on May 6, 2014, to the Supreme Court of Ohio within 30 days of service hereof as set forth in R.C. 5717.04.

Respectfully submitted,



Mark Gillis (0066908)
Rich & Gillis Law Group, LLC

Attorneys for Appellant Board of Education

OHIO BOARD OF TAX APPEALS

Dayton-Point West Real Estate Associates, LLC,)	CASE NOS. 2011-4472 and 2011-4478
)	
)	(REAL PROPERTY TAX)
Appellant/Appellee,)	
)	DECISION AND ORDER
Board of Education of the Kettering City Schools,)	
)	
Appellant/Appellee,)	
)	
vs.)	
)	
Montgomery County Board of Revision and Montgomery County Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Property Owner	-	The Gibbs Firm, LPA Ryan J. Gibbs 2355 Auburn Avenue Cincinnati, Ohio 45219
For the Board of Education	-	Rich & Gillis Law Group, LLC Karol C. Fox 6400 Riverside Drive, Suite D Dublin, OH 43017
For the County Appellees	-	Mathias H. Heck, Jr. Montgomery County Prosecuting Attorney R. Lynn Nothstine Assistant Prosecuting Attorney 301 West Third Street P.O. Box 972 Dayton, Ohio 45422

Entered **MAY 06 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 numbers J44 04103 0219, J44 04103 0222, and J44 04103 0181. These matters are now considered upon the notices of appeal and the transcripts certified by the BOR pursuant to R.C. 5717.01. The subject's total true value was initially assessed at \$7,195,230. A decrease complaint was filed with the BOR seeking a reduction in value to \$2,600,000. The board of education filed a countercomplaint in support of maintaining the auditor's values. The BOR issued decisions reducing the total true value to \$4,406,960, which led to the present appeals.

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. As the Supreme Court of Ohio has consistently held, “[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary.” *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. Such is the case in this matter, as the record does not indicate that the subject property “recently” transferred through a qualifying sale.¹ While we acknowledge the arguments made by the board of education, inherent in the appraisal process is the fact that an appraiser must necessarily make a wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported. Upon review of the property owner’s appraisal evidence, which provides opinions of value as of tax lien date, were prepared for tax valuation purposes, and attested to by a qualified expert, we find the appraisals to be competent and probative and the value conclusion reasonable and well-supported.

It is therefore the order of this board that the subject property’s true and taxable values, as of January 1, 2010, were as follows:

PARCEL NUMBER	TRUE VALUE	TAXABLE VALUE
J44 04103 0219	\$1,240,000	\$434,000
J44 04103 0222	\$1,750,000	\$612,500
J44 04103 0181	\$ 900,000	\$315,000

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

¹ The board of education argues that a June 2007 transfer was best evidence of the subject’s value. We find this sale to be too remote from the tax lien date, though we acknowledge that 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.

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.

Handwritten signature of A.J. Groeber in black ink.

A.J. Groeber, Board Secretary