

ORIGINAL

THE SUPREME COURT OF OHIO

Board of Education of the  
Olentangy Local Schools  
Appellant-Appellee,

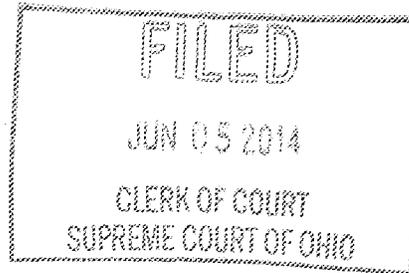
14-0932

CASE NO. \_\_\_\_\_

Vs.

Appeal from the Ohio Board  
of Tax Appeals, Case No. 2011-151

Delaware County Board of  
Revision, County Auditor, *et al.*,  
And Green Meadows SWS, LLC.,  
Appellees-Appellants.



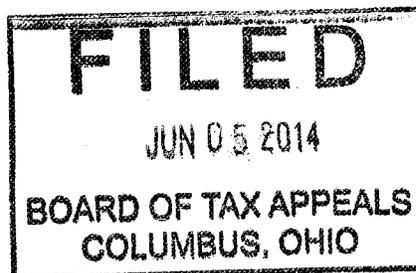
NOTICE OF APPEAL GREEN MEADOWS SWS, LLC.

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HAND DELIVERED

Appellant herein, Green Meadows SWS, LLC., by and through counsel, hereby gives notice of its appeal to the Supreme Court of Ohio, from a Decision and Order of the Ohio Board of Tax Appeals, rendered on May 9, 2014 a copy of which Decision and Order is attached hereto as Exhibit A and is incorporated herein by reference as though fully rewritten in this Notice of Appeal. This appeal is taken pursuant to section 5717.04 of the Ohio Revised Code.

Appellant states that the Decision and Order of the Board of Tax Appeals is unlawful and erroneous in the following respects:

1. The Board of Tax Appeals unlawfully and erroneously determined that a transfer of the subject property was dispositive of the fair market value thereof when said transfer occurred 31 months prior to the tax lien date.
2. The Board of Tax Appeals ( "BTA") unlawfully and erroneously ignored evidence of record, provided to the Delaware County Board of Revision, and counsel for the Board of Education.,
3. The BTA unlawfully and erroneously shifted the burden of proof to Appellant Taxpayer when the BTA appeal was filed by the Board of Education which provided no evidence as to market conditions nor appraisal evidence in support of its appeal.,
4. The BTA unlawfully and erroneously reinstated the county auditor's original valuation when the record clearly indicates that the auditor voted affirmatively to modify his original valuation due to the evidence presented to the Board of Revision, a body of which the auditor is not only a member but also statutory secretary of that board.,
5. The BTA decision is contrary to the decision of the Ohio Supreme Court in *Dublin City Schools Bd. of Edn. v. Franklin County Bd. of Revision*, \_\_\_ Ohio St. 3d \_\_\_, 2013-Ohio-4543, \_\_\_ N.E. 3d \_\_\_. ,
6. The BTA decision is contrary to *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St. 3d 493, 2011-Ohio-5078, 958 N.E. 2d 131, and *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of*

*Revision, 90 Ohio St. 564, 567, 740 N.E. 2d 276 (2001).* ,

7. The BTA ignored the fact that the subject property was placed on the market for an extended period of time and that the ultimate selling price was arrived at through two bidding processes approved by the Delaware County Court of Common Pleas. ,

8. The BTA summarily rejected the Board of Revision's capitalization rate utilized to determine the Board of Revision value without explanation.,

9. The BTA unlawfully and erroneously determined that the 31 month old sale was dispositive and erroneously and unlawfully determined that the 31 month old sale was both recent and arms length.

10. The decision of the BTA is not supported by the record, and the auditor's original valuation ( rejected by both auditor and Board of Revision) was unlawfully and erroneously adopted by the BTA. The BTA erroneously, unreasonaly, and unlawfully reinstated the original valuation and such decision is not supported by the evidence of record.,

11. The BTA erroneously and unreasonably " assumed" that there were no changes in the market with respect to the subject property from 2006 to 2009 contrary to the evidence.,

12. The BTA erroneously and unreasonably ignored the subsequent sale of the property as evidentiary.

Wherefore, Appellant herein, Green Meadows SWS, LLC., respectfully requests the Court REVERSE the Decision and Order of the Ohio Board of Tax Appeals and further ORDER the BTA to issue an order affirming the decision of the Delaware County Board of Revision.

Respectfully Submitted,



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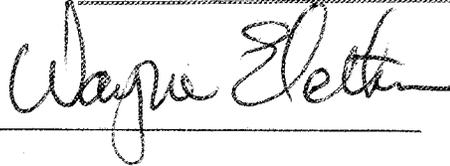
CERTIFICATE OF SERVICE

A copy of this Notice of Appeal was served upon the following parties by Certified Mail this 5th day of June, 2014:

Carol A Hamilton O'Brien, prosecutor by Certified Mail # 7005 0390 0001 9570 3735

Michael Dewine, Attorney General by Certified Mail# 7005 0390 0001 9570 3759

Kelley A. Gorry, Esq. by Certified Mail# 7005 0390 0001 9570 3742



Wayne E. Petkovic (0027086)

# OHIO BOARD OF TAX APPEALS

Board of Education of the Olentangy	)	CASE NO. 2011-151
Local Schools,	)	
	)	(REAL PROPERTY TAX)
Appellant,	)	
	)	DECISION AND ORDER
vs.	)	
	)	
Delaware County Board of Revision,	)	
Delaware County Auditor and Green	)	
Meadows SWS, LLC,	)	
	)	
Appellees.	)	

## APPEARANCE:

For the Appellant	-	Rich & Gillis Law Group, LLC Kelley A. Gorry 6400 Riverside Drive, Suite D Dublin, OH 43017
For the County Appellees	-	Carol Anne Hamilton O'Brien Delaware County Prosecuting Attorney Mark W. Fowler Assistant Prosecuting Attorney 140 North Sandusky Street, 3 <sup>rd</sup> Floor Delaware, OH 43015
For the Appellee Property Owner	-	Wayne Pekovic, Esq. 840 Brittany Drive Delaware, OH 43015
Copy to New Owner	-	Xigent Automation Systems, Inc. 8303 Green Meadows Drive North Lewis Center, OH 43035

Entered **MAY 09 2014**

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

For tax year 2009, the county auditor determined the true value of the subject properties to be \$3,738,200 for parcel number 318-312-02-007-000 and \$336,800 for parcel number 318-313-04-001-000. A complaint was filed with the board of revision ("BOR") on behalf of the property owner, Green Meadows SWS LLC ("Green Meadows"), which sought reduced values. The affected board of education ("BOE") filed a counter-complaint, which sought to retain the county auditor's values. At the hearing before the BOR, Greg Hardy appeared on behalf of Green Meadows and presented evidence in support of the requested values. Counsel for the BOE also appeared at the hearing to argue that the subject properties

should be valued consistent with a \$4,075,000 transfer of the properties on or about May 23, 2006, i.e., the county auditor's values. The BOR referred the matter to Mike Schuh, deputy auditor and appraiser, to evaluate Green Meadows' evidence, Hardy's various methods of determining the subject properties' value, profit and loss statements for tax years 2009 and 2010 and a rent roll. Schuh subsequently issued a written recommendation to reduce the subject properties' combined true value to \$3,330,000. However, the BOR voted to reduce the subject properties' value to \$1,879,100<sup>1</sup> and this appeal ensued. At the hearing before this board, counsel for the BOE argued that the record did not support the BOR's decision to reduce the subject properties' values; counsel for Green Meadows argued that the record supported the BOR's decision.<sup>2</sup>

In considering this appeal, we note that when a party appeals to this board, it has an affirmative burden to prove its right to the adjustment in value claimed. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564. An appellant may meet this burden of proof by showing that the BOR erred when it reduced a property's value from the amount first determined by the auditor. *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 106 Ohio St.3d 157, 2005-Ohio-4385.

Typically, the "best evidence" of a property's value is the amount for which it transfers between two unrelated parties near tax lien date. See, e.g., *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979. It is the

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<sup>1</sup> The transcript of the BOR's vote to reduce the subject properties' values indicate that the BOR relied upon Green Meadows' "profit and loss statement for the first 4.3 months of 2010 reflecting the deterioration of tenants in that property. So annualizing \$74,000[,] I got an annualized value of \$206,500, and then I used an 11 percent cap rate to arrive at a value of \$1,877,300, rounded."

<sup>2</sup> At the hearing before this board, counsel for the BOE objected to Green Meadows' exhibits based on a violation of this board's rule that each party shall provide copies of the documentary exhibits it plans to offer into evidence at least fourteen days prior to the hearing. See Ohio Adm. Code 5717-1-15(I). As we accord these documents no weight in our decision for the reasons stated infra, the BOE was not prejudiced by the Green Meadows' failure to disclose this evidence, rendering such objections moot.

However, even if we were to consider the documents, which indicate that at least one of the subject properties' was the subject of a receivership sale in tax year 2012, we would have concluded that the transfer was not the best indication of the relevant parcel's value. This board has previously found sales conducted through receivers not to be arm's-length in nature, as they typically occur under duress and therefore are forced sales. See, e.g., *Nadler v. Cuyahoga Cty. Bd. of Revision* (Feb. 15, 2013), BTA No. 2012-Q-3033, unreported. See, also, *Bd. of Edn. of the Rolling Hills Local Schools v. Guernsey Cty. Bd. of Revision* (Sept. 25, 2012), BTA No. 2009-Q-3475, unreported (finding sale through bankruptcy was not at arm's length despite property being marketed for sale); *Davis v. Lorain Cty. Bd. of Revision* (Dec. 11, 2012), BTA No. 2011-Q-3370, unreported (finding sale through receiver in lieu of foreclosure proceedings was not arm's length).

burden of a party contesting the utility of a sale to rebut the presumptions to be accorded to it. See, e.g., *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325; *South Euclid-Lyndhurst City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (May 13, 2005), BTA No. 2003-G-1041, unreported, at 9. After the rebuttable presumption of an existing sale has been established, then typically, “the only rebuttal lies in challenging whether the elements of recency<sup>3</sup> 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. It remains the burden of a party contesting the utility of a sale to rebut the presumptions to be accorded it. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 129 Ohio St.3d 3, 2011-Ohio-2316.

Green Meadows did not challenge the arm’s-length nature of the May 2006 sale; however, it argued that the sale was too remote to the tax lien date of January 1, 2009. We must conclude that the record before us demonstrates Green Meadows failed to provide competent and probative evidence to support its burden before the BOR. Although Green Meadows provided its income and expense information, there was no information in the record to determine whether such income and expenses conformed to the market. In *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 552, 555, the court commented that “an appraiser may employ actual income as reduced by actual expenses if both conform to market.” Continuing, the court noted that it has “required the BTA to make factual findings, supported by the record, of the appropriate market rents and expenses to be used in the income approach to value.” *Id.* We find no such evidence in the record from which we can determine whether the subject properties’ income and expenses were market-based, nor are we able to extrapolate market value from such raw property-specific data. For these same reasons, we find the record does not support the BOR’s use of the income approach to value to reduce the subject properties’ values.

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<sup>3</sup> Evident from numerous Supreme Court decisions, the mere passage of some months between sale and tax lien dates is not sufficient cause to disregard a sale. See, e.g., *HK New Plan Exchange Property Owner II, LLC v. Hamilton Cty. Bd. of Revision* (2009), 122 Ohio St.3d 438 (value based upon sale occurring twenty-four months prior to tax lien date); *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision* (2006), 108 Ohio St.3d 310 (value based upon its sale which occurred twenty-two months after tax lien date). This board has also found a sale occurring 40 months prior to tax lien date to be a valid indicator of value. *McCarty v. Clark Cty. Bd. of Revision* (Sept. 21, 2010), BTA No. 2008-V-2302, unreported.

Moreover, although the BOR provided the basis for its decision, i.e., Green Meadows' profit and loss statement for January 2010 to April 2010, it failed to explain how it derived an eleven percent capitalization rate to arrive at a \$1,877,300 value for the subject properties. As such, we are unable to discern whether that capitalization rate was appropriate and, therefore, we are unable to replicate the BOR's finding of value. *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St. 3d 188; 2013-Ohio-3028 (approving BTA's decision to reject BOR's finding of value when the finding could not be replicated on appeal).

We are mindful of the court's decision in *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078, at ¶21, which held: "[i]t 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.) Therefore, as a result, we must reinstate those values originally assessed by the county auditor. See *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921. It is therefore the order of this board that the subject properties' true and taxable values, as of January 1, 2009, are as follows:

PARCEL NUMBER	TRUE VALUE	TAXABLE VALUE
318-312-02-007-000	\$3,738,200	\$1,308,370
PARCEL NUMBER	TRUE VALUE	TAXABLE VALUE
318-313-04-001-000	\$336,800	\$117,880

We order the Delaware County Auditor to list and assess the subject properties in conformity with this decision and order.

I hereby certify the foregoing to be a true and complete copy of the action this day 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