

ORIGINAL

IN THE SUPREME COURT OF OHIO

Board of Education of the Columbus City Schools,

Appellant,

v.

Franklin County Board of Revision, Franklin County Auditor, and 3600 Sullivant Avenue, LLC.

Appellees.

Case No. 2014-0723

Appeal from the Ohio Board of Tax Appeal - Case No. 2011-2109

MERIT BRIEF OF APPELLANT BOARD OF EDUCATION OF THE COLUMBUS CITY SCHOOL DISTRICT

Mark Gillis (0066908) COUNSEL OF RECORD Rich & Gillis Law Group, LLC 6400 Riverside Drive, Suite D Dublin, OH 43017 (614) 228-5822 Fax: (614) 540-7474 mgillis@richgillislawgroup.com

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

Ron O'Brien (0017245) Franklin County Prosecuting Attorney William J. Stehle (0077613) COUNSEL OF RECORD Assistant County Prosecutor 373 South High Street, 20th Floor Columbus, Ohio 43215

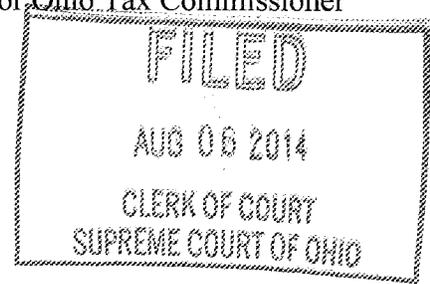
Attorneys for County Appellees

Mary Jane McFadden (0005777) McFadden, Winner, Savage & Segerman 175 South Third Street, Suite 350 Columbus, Ohio 43215-5188 (614) 221-8868 Fax (614) 221-3985

Attorney for Appellee Sullivant Holdings, LLC

The Honorable Mike DeWine (0009181) Ohio Attorney General 30 East Broad Street, 17th Floor Columbus, OH 43215 PH: (614) 466-4986

Attorney for Ohio Tax Commissioner



**TABLE OF CONTENTS**

Table of Authorities ..... iv

Statement of the Case..... 1

Statement of Facts..... 2

Law and Argument..... 6

Introduction..... 6

Proposition of Law No. 1:

    The BTA’s determination of the true value of real property must be based  
    on probative evidence. .... 7

Proposition of Law No. 2:

    The BTA must base the determination of the true value of real property on objective  
    appraisal facts and objective market data and not upon the subjective judgments of  
    some appraiser ..... 9

Proposition of Law No. 3:

    The BTA must determine the facts upon which the true value of the property must  
    be based in accordance with the provisions of both R.C. 5715.01 and the  
    administrative code rules adopted under that section, and the BTA must set  
    forth the relevant facts in its decision. .... 13

Proposition of Law No. 4:

    The BTA cannot accept an appraisal report that contains errors that affect  
    the appraiser’s opinion of value ..... 16

Conclusion ..... 22

Certificate of Service ..... 23

APPENDIX Appx. Page

Notice of Appeal ..... 1

BTA Decision and Order .....7  
Article XII, Section 2, of the Ohio Constitution.....10  
R.C. 5715.01 .....12  
Adm. Code Rule 5703-25-06(A) .....13  
Adm. Code Rule 5703-25-05(F)(1) and (G).....15  
*Dictionary of Real Estate Appraisal* (1984) – Definition of “Net Lease” .....16

## TABLE OF AUTHORITIES

Cases:

<i>Board of Educ. of the Columbus City Sch. Dist. v. Franklin County Bd. of Revision</i> , 90 Ohio St.3d 564, 740 N.E.2d 276 (2001) .....	14
<i>Board of Education of the Columbus City Schools, vs. Franklin County Board of Revision, et al.</i> (April 21, 2014), BTA Nos. 2012-3902 and 2012-3903, 2014 Ohio Tax Lexis 2509.....	21
<i>Board of Educ. of the Hilliard City Schools v. Franklin Cty. Bd. of Revision</i> , BTA Nos. 2010-Q-845; 2010-Q-846; 2010-Q-847; 2010-Q-848, 2013 Ohio Tax LEXIS 3647 (July 31, 2013)..	18
<i>Board of Educ. of the Hilliard City Schools v. Franklin Cty. Bd. of Revision</i> , BTA No. 2010-3826, 2014 Ohio Tax LEXIS 2288 (Apr. 10, 2014) .....	18
<i>Board of Education of the Hilliard City Schools vs. Franklin County Board of Revision, et al.</i> , BTA No. 2013-2746, 2014 Ohio Tax Lexis 1743 (March 14, 2014),..	21
<i>Cleveland v. Budget Comm.</i> , 47 Ohio St.2d 27, 350 N.E.2d 924 (1976) .....	14
<i>Dak, PLL v Franklin County Board of Revision</i> , 105 Ohio St.3d 84; 2005-Ohio-573; 822 N.E.2d 790 .....	8
<i>Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision</i> , 139 Ohio St.3d 212, 2014-Ohio-1940 .....	12
<i>Dublin Senior Community Ltd. Pshp. v. Franklin County Bd. of Revision</i> , 80 Ohio St.3d 455, 687 N.E.2d 426 (1997).....	14
<i>General Motors Corp. v. Cuyahoga County Bd. of Revision</i> , 74 Ohio St.3d 513, 660 N.E.2d 440 (1996).....	20
<i>General Motors Corp. v. Cuyahoga Cty. Bd. of Revision</i> , 67 Ohio St.3d 310, 617 N.E.2d 1102 (1993).....	15
<i>HealthSouth Corp. v. Levin</i> , 121 Ohio St.3d 282, 2009-Ohio-584, 903 N.E.2d 1179 .....	14
<i>HIN, L.L.C. v. Cuyahoga County Bd. of Revision</i> , 138 Ohio St.3d 223; 2014-Ohio-523 .....	17
<i>Howard v. Cuyahoga Cty. Bd. of Revision</i> , 37 Ohio St.3d 195, 524 N.E.2d 887 (1988).....	14, 15

<i>Hotel Statler v. Cuyahoga County Bd. of Revision</i> , 79 Ohio St.3d 299, 303, 681 N.E.2d 425 (1997) .....	20
<i>Meijer, Inc. v. Montgomery County Bd. of Revision</i> , 75 Ohio St.3d 181, 661 N.E.2d 1056 (1996).....	12
<i>Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision</i> , 75 Ohio St.3d 552, 664 N.E.2d 922 (1996).....	15
<i>Porter v. Bd. of Revision</i> , 50 Ohio St.2d 307, 364 N.E.2d 261 (1977).....	11
<i>Rollman &amp; Sons Co. v. Board of Revision of Hamilton Cty.</i> , 163 Ohio St. 355, 127 N.E.2d 1 (1955).....	12
<i>Villa Park Limited v. Clark Cty. Bd. of Revision</i> , 68 Ohio St.3d 215, 625 N.E.2d 613 (1994).....	15

Statutes, Rules and Other Authorities

Article XII, Section 2, of the Ohio Constitution .....	10
R.C. 5715.01 .....	10
Adm. Code Rule 5703-25-06(A) .....	10
Adm. Code Rule 5703-25-05(F)(1) and (G) .....	11
<i>Dictionary of Real Estate Appraisal</i> (1984) .....	16

## STATEMENT OF THE CASE

This is an appeal from the Ohio Board of Tax Appeals (BTA) involving the determination of the true value of a 221,720 square-foot distribution warehouse for tax year 2008. The property is located on 13.4 acres of land at 3600 Sullivant Avenue in the City of Columbus (see appraisal prepared by Andrew Moye, p. 1, Supp. 1).

The Franklin County Auditor originally appraised the property for tax year 2008 for \$2,750,000. The prior owner of the property, 3600 Sullivant Avenue LLC, filed a complaint for tax year 2008. The property owner presented the Franklin County Board of Revision (BOR) with an appraisal prepared by Andrew Moye, who arrived at a value of \$1,520,000 for the property.

Moye made two fundamental errors in his appraisal of the property in accounting for real estate taxes as an expense item in his standard “net” lease appraisal of the property and in his “dollar-for-dollar” deduction from the value of the property for his estimate of the cost to cure what he claimed was “some deferred maintenance at the property” (appraisal report, p. 1, Supp. 1.). When both of these errors are corrected, Moye’s value for the property was the same as the County Auditor’s original appraisal of the property.

The BOR, however, accepted Moye’s appraisal of the property and reduced the value of the property to \$1,520,000. The Board of Education appealed this decision to the BTA, and the BTA heard the appeal on the record from the BOR and on the briefs of the parties. In its two briefs, the Appellant Board of Education specifically pointed out, among other things, the two errors made by Moye. In a decision dated April 10, 2014, the BTA unreasonable and unlawfully accepted Moye’s appraisal of the property. To decide the appeal, the BTA used its new templated standard form decision in which all issues before the BTA are resolved by the use of only two substantive

sentences: in the first sentence the BTA declares that it will accept all property owners' appraisals, notwithstanding the fact that the appraisal may not constitute probative evidence of the true value of the property; and in a second sentence the BTA refuses to acknowledge the validity of any errors in an appraisal because all judgments of an appraiser are "subjective judgments" which are not subject to challenge.

The Board of Education then appealed the BTA's decision to this Court on May 8, 2014.

Appx. 1.

### **STATEMENT OF THE FACTS**

Because the BTA refuse to address any issues raised by a board of education in its decisions, the Appellant will provide a somewhat detailed discussion of the relevant facts in this brief.

#### **1. Errors in Moye's Appraisal**

The property owner's appraiser, Andrew Moye, made two fundamental errors in his appraisal of the subject property. The first error was simply a careless error in which Moye forgot to account for the tenant's reimbursement of the real estate taxes as an income item in valuing the property using an income approach, or to put the issue in more current appraisal practice, Moye mistakenly used a full tax additur when he should have used only a vacancy-weighted tax additur. The second error was in taking a dollar-for-dollar deduction against his estimate of the final value of the property for what Moye claimed was the cost to cure "some deferred maintenance at the property."

Net Lease Error – The standard approach for valuing an industrial warehouse is to use an income approach based on the fact that a typical tenant will occupy the property under a "net lease" which requires the tenant to pay real estate taxes, insurance, and maintenance and repairs (this is also

referred to as a triple net lease). Moye valued the property using a “net lease” (a triple net lease) approach with the tenant either directly paying these expenses itself or reimbursing the owner for all real estate taxes, insurance, and repairs which the owner pays on behalf of the tenant. To value the property, Moye used a market or economic rental rate of \$1.50 per square foot that was on a “net basis” (appraisal report, p. 32, Supp. 16). All of Moye’s rental comparables were “net lease” properties (appraisal, p. 8, Supp. 8). On page 31 of his appraisal report (Supp. 15), Moye stated that “[f]or the purposes of valuation, recapture of real estate taxes (excluded in this analysis), insurance, and repairs & maintenance, is appropriate.” Moye’s reference to the fact that real estate taxes were “excluded in this analysis” appears to be a reference to the fact that such taxes were not included in his “operating expense” deductions shown on page 34 of his appraisal report, but rather were included as a percentage of value added to the overall capitalization rate in the form of the tax additur (appraisal, p. 36, Supp. 19) as 2.57 percent of the value of the property.

In the case of a “net lease”, the appraiser cannot take the real estate taxes, insurance, and maintenance and repair expenses as an operating expense deduction of the owner because the tenant pays these expenses, not the owner. As is sometimes the case, if the owner chooses to pay these expenses on behalf of the tenant, then the tenant is required to reimburse the owner for the expenses and the landlord is said to “recapture” the expense items through the tenant’s reimbursements. If the owner pays these expenses and recaptures the expenses from the tenant, then the appraiser must always include the reimbursements or recaptured income as additional income arising from the property if the expense items are included as operating expenses paid by the owner.

The simple and careless error made by Moye was that, while he included the full amount of the real estate taxes as an expense item of the owner in the form of a tax additur, he simply forgot to

include the real estate tax reimbursement from the tenant as income to the property owner. Put another way, because Moye did not include the tenant's reimbursement of the real estate taxes as an income item, he could not use a full tax additur, but only a "vacancy weighted tax additur" (to be explained below). On page 33 and 34 of his appraisal report, Moye shows that he took "insurance" and "repairs and maintenance" as "recapturable" expense items (as expense deductions of \$77,602) and he shows this same figure on the income side as reimbursed income from the tenant as "operating expense recapture" income (appraisal, p. 34, Supp. 18). The total reimbursed income was the same figure of \$77,602 that Moye attributed to the insurance and repairs and maintenance expenses paid by the owner. However, Moye simply forgot that at the very end of his appraisal report he had added the real estate taxes as expense item in the form of a full tax additur, which is the equivalent of treating real estate tax as an operating expense deduction (appraisal report 36, Supp. P. 19). When he included real estate taxes as a full tax additur, Moye failed to add the reimbursement or "recapture" of the real estate taxes as additional income to the owner (see appraisal, p. 34, Supp. 18). This is not an uncommon error by an appraiser, who makes sure that when he values property under a "net lease" appraisal that his reimbursed income items matches his expense deductions for these items on the same page of his appraisal (shown on page 34 of his report, Supp. 18), but then forgets that he later adds an expense deduction for real estates as a tax additur and therefore fails to realize that he also needs to add this figure to his reimbursed income figure. This error resulted in a mistaken reduction in the value of the property by \$527,000.

Dollar -for-Dollar Deferred Maintenance Deduction -The other error made by Moye was to deduct \$700,000 from his final value conclusion for the property (reducing the value from \$2,190,000 to \$1,490,000; see appraisal, p. 36, Supp. 19) for what Moye claimed was "some

deferred maintenance at the property” (appraisal, p. 1, Supp. 6). Moye described the expenses necessary in his mind to fix these items of deferred maintenance as “capital expenditures” (appraisal, p. 11, Supp. 10). Moye’s estimate of the cost to cure this deferred maintenance was based on the “estimate cost to remedy these items” taken directly from a cost manual published by Marshall Valuation Services (appraisal, p. 18, Supp. 14). These items included “roof replacement”, “HVAC replacement” and “Fire suppression system” replacement (appraisal, p. 18, Supp. 14).

Both the BTA and this Court have previously held that no such “dollar-for-dollar” deduction based solely on the purported cost to cure deferred maintenance can be taken against the value of the property. These errors were specifically pointed out by the BOE to both the Board of Revision and to the BTA, but both errors were totally disregarded by both. In accepting an appraisal having a value that was substantially affected by both of these errors, the BTA violated not only its own consistent precedent, but also violated this Court’s well-established precedent (see, for instance, *Hotel Statler v. Cuyahoga County Bd. of Revision*, 79 Ohio St.3d 299, 303, 681 N.E.2d 425 (1997), to be discussed below). In its rush to judgment and in its use of its new templated standard decision form, the BTA did not even discuss these two issues in its decision and it is fair to say that there is no indication that the BTA read the briefs of the Board of Education which discussed these two issues in detail.

Moye Never Inspected the Interior of the Property -The extraordinary fact about Moye’s handling of these alleged items of deferred maintenance is that he never inspected the interior of the building; that is, he never got inside the property at all. Moye never verified or confirmed that any of these deferred maintenance items even existed, or, for instance, that the items needed to be replaced rather than repaired. Moye admitted at the BOR hearing that he did not inspect the interior of the

building and he wrote in his appraisal report that he was only “at the property” on November 19, 2010 (appraisal, p. 4, Supp. 7). There are no photographs of any part of the interior of the building in Moye’s appraisal, and the photographs that are in the report appear to be taken from the street. Moye acknowledged in his appraisal report that what he knew about these alleged items of deferred maintenance was based on what he was told by “the broker listing the property” (appraisal, p. 15, Supp. 11), and from his “conversations with the marketing broker” (appraisal, p. 16, Supp. 12). Moye stated, for instance, that “[a]ccording to the broker listing the property, the roof had several leaks as of the date of valuation and needed to be replaced” (appraisal, p. 15, Supp. 11). According to Moye, the broker told him that the HVAC system had to be replaced. Moye’s claim that the fire suppression system had to be replaced was based on his “conversations with the broker” (appraisal, p. 17, Supp. 13).

## **LAW AND ARGUMENT**

### **Introduction**

In an obvious effort to reduce its pending case load, the BTA is now using a standard pre-printed decision form which sets forth only two, and in some cases only one, pre-printed operative sentences by which the BTA purports to resolve all of the issues involved in the appeal before it. The use of this new pre-printed form decision by the BTA is per se unreasonable and unlawful for a number of reasons.

The BTA’s new form decision is extraordinary for both what it says and for what it does not say. In this new pre-printed decision form, the BTA:

- (1) Adopts the property owner’s appraisal in one sentence using three specific criteria that literally have nothing to do with the probative nature of the appraisal evidence;

- (2) Holds, also in one sentence, that any and all objections to the owner's appraisal report have no merit because all such judgments are merely the "subjective judgments" of the appraiser that cannot be subject to challenge by a board of education;
- (3) Makes no findings of fact, and especially none that are essential to the lawful determination of the true value of the property, and does not even identify or otherwise describe the property;
- (4) Deprives a board of education of its statutory right to be a "party" to the BTA appeal by failing to address a single issue raised by a board of education during the course of the appeal.

Furthermore, the BTA erred in specifically accepting the appraisal of Andrew Moye in this case because the appraisal did not constitute competent and probative evidence of the true value of the property.

The primary consequence of the BTA's use of its new pre-printed form decision is to transfer to this Court the BTA's statutory duty to determine the facts upon which true value must be based. This Court must now perform the BTA's duty to de novo "hear and decide" the appeal; it must perform the BTA's duty to determine what facts that are relevant to a determination of the true value of the property in accordance with the statutes and administrative code rules; and it must perform the BTA's duty to "determine the [true] value of the property" in accordance with the facts. Finally, this Court must decide the issues raised by the BOE without the benefit of having the BTA even comment on, let alone decide, those issues, because the BTA now refuses to do so.

**Proposition of Law No. 1:**

The BTA's determination of the true value of real property must be based on probative evidence.

As indicated in the Introduction, the BTA's new form decision contains only one sentence

that is in any manner relevant to its determination of the true value of the property. In this one sentence, the BTA adopts the property owner's appraisal with the following proclamation:

Upon review of appellee's [property owner's] appraisal evidence, which [1] provides an opinion of value as of tax lien date, [2] was prepared for tax valuation purposes, and [3] attested to by a qualified expert, we find the appraisal to be competent and probative and the value conclusion reasonable and well-supported. (BTA Decision and Order, page 2, brackets added).

On its face, this sentence clearly violates well-settled law that requires a property owner to present "competent and probative" evidence that proves the true value of the property. Obviously, none of the BTA's three criteria identified by the brackets have anything to do with the "probative" nature of the appraisal evidence, nor are they even relevant in deciding whether an appraisal is "reasonable and well-supported." The first and third requirements (a correct "as of" date and "attested to by a qualified expert") obviously have nothing to do with the issue of whether the appraisal evidence itself is "probative" evidence or whether the appraiser's conclusions are "reasonable and well-supported". These two factors relate only to the legally competent nature of the appraisal as evidence before the BTA, not to the probative nature of the appraisal itself. The second requirement (an appraisal prepared for tax purposes) likewise only pertains to the competency of the appraisal, but says nothing regarding its probativeness to prove value.

It is one of the well-settled principles of BTA/BOR procedure that a property owner must present "competent and probative evidence" to prove the true value of the property. The requirement to present the BTA with "probative" evidence means that the evidence must "prove that the value that [the property owner] proffers is correct." *Dak, PLL v Franklin County Board of Revision*, 105 Ohio St.3d 84; 2005-Ohio-573; 822 N.E.2d 790, ¶13. The "probative evidence" upon which true value must be based consists of the appraisal-related facts (market data) that prove the true value of

the property. The BTA is profoundly wrong as matter of law if it believes that its three factors referred to in the sentence quoted above have anything to do with the “probative” nature of an appraisal or whether the appraisal is “reasonable and well supported”. This Court’s review of this single sentence, which is the only sentence in the BTA’s decision to relate to the valuation of the property, should be sufficient to justify a reversal of the BTA’s decision.

**Proposition of Law No. 2:**

The BTA must base the determination of the true value of real property on objective appraisal facts and objective market data and not upon the subjective judgments of some appraiser.

In the second operative sentence of the BTA’s decision, the BTA concluded that all parts of an appraisal are based on the “subjective judgments” of the appraiser. This sentence is likewise unreasonable and unlawful and contradicts all of the constitutional, statutory, and administrative code rules that govern the determination of true value. The BTA’s one sentence declaration that all parts of an appraisal reflect the “subjective judgments” of an appraiser was the following:

While we acknowledge the arguments made by the appellant [BOE], 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.

The only point of this cryptic and extraordinary statement is to prohibit a board of education from making any objections to a property owner’s appraisal because a board of education cannot raise a meritorious objection to what is merely the “subjective judgments” of an appraiser. As such, the BTA now declares that it has no need to even address any objection made by the BOE to any part of the appraisal because no such objection could possibly be valid.

This single sentence is patently inconsistent with Article XII, Section 2, of the Ohio Constitution and with all of the statutes and rules that govern the determination of the true value of real property. Article XII, Section 2, of the Ohio Constitution states that “[l]and and improvements thereon shall be taxed by uniform rule according to value” and the first sentence of this section refers to “true value in money” as the criterion of “value.” Appx. 10. R.C. 5715.01 implements the constitutional “uniform rule” requirement by instructing the Tax Commissioner to “adopt, prescribe, and promulgate rules for the determination of true value and taxable value of real property by uniform rule.” Under both R.C. 5715.01 and Adm. Code Rule 5703-25-06(A), the essential or fundamental requirement of the “uniform rule” is that true value must be based on the “facts \*\*\* that tend[] to prove [true] value” and the “facts tending to indicate the” true value of the property. In addition to these general reference to the “facts” required by the “uniform rule,” these two provisions, as well as other provisions, describe a large number of specific “facts” upon which true value must be based. R.C. 5715.01 sets forth the “facts” that “shall be used” to determine true value:

The uniform rules shall prescribe methods of determining the true value and taxable value of real property \*\*\* which method shall reflect standard and modern appraisal techniques \*\*\*. The rules shall provide that in determining the true value of lands or improvements thereon for tax purposes, all facts and circumstances relating to the value of the property, its availability for the purposes for which it is constructed or being used, its obsolete character, if any, the income capacity of the property, if any, and any other factor that tends to prove its true value shall be used. Appx. 12.

Adm. Code Rule 5703-25-06(A) implements the statutory requirements set forth above by stating the following:

“True value in money” shall be determined \*\*\* on consideration of all facts tending to indicate the current or fair market value of the property including, but not limited to, the physical nature and construction of the property, its adaptation and availability for the purpose for which it was acquired or constructed or for the purpose for which it is or may be used, its actual cost, the method and terms of financing its acquisition,

its value as indicated by reproduction cost less physical depreciation and all forms of obsolescence if any, its replacement cost, and its rental income-producing capacity, if any. Appx. 13.

In *Porter v. Bd. of Revision*, 50 Ohio St.2d 307, 311, 364 N.E.2d 261 (1997), this Court held that the BTA was subject to these requirements: “In determining [true value], this court has held on several occasions that, for tax assessment purposes, all facts and circumstances which may affect the value of the property must be taken into consideration.” For instance, the essential facts needed to perform the three approaches to value are set forth in Adm. Code Rule 5703-25-05 and Adm. Code Rule 5703-25-07.

There is no rational basis for concluding that what the BTA refers to as the “subjective judgment” of some appraiser could be one the “facts” that are referred to in either R.C. 5715.01 or Adm. Code Rule 5703-25-06(A). For instance, while the BTA refers to the “subject judgments in selecting the data to rely upon [and] effect [sic] adjustments” to the data, Adm. Code Rule 5703-25-05(F)(1) states that “[t]he reliability of [the income approach] is dependent upon \*\*\* [t]he reasonableness of the estimate of the anticipated net annual incomes;” and Division (G)(1) of this rule states that “[t]he reliability of [the market data approach] is dependent upon \*\*\*[t]he degree of comparability of each property with the property under appraisal.” Appx. 11. In no sense is the “reasonableness” of an income estimate or the “degree of comparability” of another property to the property being appraised based on the “subjective judgments” of some appraiser. It is beyond dispute that the true value of real property must be based on facts and that these facts consist of appraisal data or market data, and that none of these facts either are, or can be based on, or be created by, the “subjective judgments” of some appraiser.

Second, the “subjective judgments” or opinions of an appraiser do not “tend[] to prove” the true value of real property in the absence of valid appraisal data and the use of valid appraisal procedures. In *Rollman & Sons Co. v. Board of Revision of Hamilton Cty.* (1955), 163 Ohio St. 355, 365, 127 N.E.2d 1, this Court held that the property owner’s “burden [of proof] is not sustained where the only evidence introduced as to such fact [the existence of depreciation] is the unsupported opinion of a witness for the taxpayer [an ‘expert’ appraiser], who fails, though requested to do so, to substantiate his opinion with facts and figures.” See also *Meijer, Inc. v. Montgomery County Bd. of Revision*, 75 Ohio St.3d 181, 186, 661 N.E.2d 105 (1996).

Third, if the critical parts of an appraisal are all based on the “subjective judgments” of the appraiser, then there is no such thing as a good appraisal or a bad one (which, of course, appears to be the BTA’s point). If this is true, then the entire body of case law established by this Court to govern the BTA’s determination of true value is now obsolete. That there is, of course, such a thing as a bad appraisal was most recently pointed out by this Court in *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 212, 2014-Ohio-1940, in which this Court held that “Horner’s Bulk-Value Appraisal Was Inappropriate” (headnote A at the beginning of this Court’s analysis at ¶ 16). The appraisal was inconsistent with law because the “appraisal predicted actual sale prices and then discounted those sale prices to arrive at a cash-in-hand valuation.” As in the present appeal, the appraiser improperly took deductions from his otherwise final opinion of value to arrive at what the appraiser also described as a “net present-value” appraisal; the appraiser “deducted sales costs such as commissions, legal fees, holding costs, and property taxes” and then “applied a 20 percent time-value-of-money discount to account for the absorption rate of the condominiums” *Id.* at ¶ 4, ¶ 26. These deductions were “inappropriate” simply because the deductions were not consistent

with the constitutionally required uniform rule of valuing real property. In fact, the BTA's "subjective judgment" statement appears to be a rhetorical device used by the BTA to justify its acceptance of the property owner's appraisal regardless of its merits and to justify its refusal to address any objections made to the appraisal by a board of education.

**Proposition of Law No. 3:**

The BTA must determine the facts upon which the true value of the property must be based in accordance with the provisions of both R.C. 5715.01 and the administrative code rules adopted under that section, and the BTA must set forth the relevant facts in its decision.

The BTA's use of its new one or two-page pre-printed form decision to decide appeals before it was per se "unreasonable and unlawful" because the BTA does not identify a single fact upon which it relied to determine the true value of the property, and because the BTA refused to address even a single issue raised by the BOE in its briefs. This Court has held numerous times that it is impossible for it to review the BTA's decision as required by R.C. 5717.04 when the BTA fails to set forth the facts upon which its decision is based. As part of the requirement to state the facts upon which it relies is the requirement to address the issues raised by the BOE in its brief.

This Court has stated numerous times that the BTA is required to identify and set forth the relevant "facts" in its decision. This requirement has been referred to as the *Howard* standard, after *Howard v. Cuyahoga Cty. Bd. of Revision* (1988), 37 Ohio St.3d 195, 197, 524 N.E.2d 887, in which this Court stated the following:

This court is unable to perform its appellate duty when it does not know which facts the BTA selected in rendering its decision. We now require it to state what evidence it considered relevant in reaching its value determinations. Accordingly, the decision of the BTA is reversed and the cause is remanded for reconsideration in conformity with this opinion.

General holdings of this Court that require the BTA to set forth the facts that it relies on to justify its acceptance of an appraisal report are set forth in *HealthSouth Corp. v. Levin*, 121 Ohio St.3d 282, 2009-Ohio-584, 903 N.E.2d 1179, in citing from *Howard v. Cuyahoga Cty. Bd. of Revision*, 37 Ohio St.3d 195, 197, 524 N.E.2d 887 (1988) (“the BTA has the duty to state what evidence it considered relevant in reaching its determination” [¶34]); *Cleveland v. Budget Comm.*, 47 Ohio St.2d 27, 31, 350 N.E.2d 924 (1976) (the BTA’s decision must “set out adequate reasons, supported by the evidence, for its finding”); and *Board of Educ. of the Columbus City Sch. Dist. v. Franklin County Bd. of Revision*, 90 Ohio St.3d 564, 565, 740 N.E.2d 276 (2001), (“We also require the BTA to state what evidence it considers relevant in reaching a value determination”).

The BTA cannot satisfy the *Howard* standard by simply proclaiming that has found an appraisal to be “competent and probative evidence,” as is done by the BTA in its new pre-printed form decision. In *Dublin Senior Community Ltd. Pshp. v. Franklin County Bd. of Revision*, 80 Ohio St.3d 455, 462, 687 N.E.2d 426 (1997), this Court stated the “BTA must analyze the appraisal and set forth its reasons for accepting or rejecting it”:

If the BTA considered, but did not accept, Swift’s appraisal, it should have set forth that fact in its decision, along with its reasons for not accepting the appraisal. In *Howard v. Cuyahoga County Board of Revision*, 37 Ohio St.3d 195, 197, 524 N.E.2d 887, 889 (1988), we stated, “This court is unable to perform its appellate duty when it does not know which facts the BTA selected in rendering its decision. We now require it to state what evidence it considered relevant in reaching its value determinations.” Before we can rule on the BTA’s decision concerning Swift’s appraisal, the BTA must set forth its determination thereon. On remand, the BTA must analyze the Swift appraisal and set forth its reasons for accepting or rejecting it.

The requirement to state the “facts” based on an analysis of the appraisal means that the BTA must provide this Court with a “detailed explanation” of the specific appraisal data or market data that it relies on to justify its opinion of value. The details of the data to be identified by the BTA are

described in *Villa Park Limited v. Clark Cty. Bd. of Revision*, 68 Ohio St.3d 215, 218-219, 625 N.E.2d 613 (1994); *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 552, 555, 664 N.E.2d 922 (1996) and in *General Motors Corp. v. Cuyahoga County Bd. of Revision*, 67 Ohio St.3d 310, 617 N.E.2d 1102 (1993). In the *Villa Park Limited* decision, supra, the Court reversed a BTA decision because it did not make specific findings of fact; in this case the specific rents and expenses that it relied on to determine the true value of the property:

The decision of the BTA is reversed and remanded to the BTA with instructions to (1) review and reconsider the record, (2) make factual findings, that are supported by the record, of the appropriate economic or market rents and expenses to be used in the income approach to value, and (3) indicate the specific calculations the BTA uses to determine the fair market value or the “true value in money” of the subject property.

The extent of the detailed “facts” required to be set forth by the BTA in its decision was described in *General Motors Corp. v. Cuyahoga County Bd. of Revision*, supra, at page 311, where this Court stated the following:

*Howard v. Cuyahoga Cty. Bd. of Revision* (1988), 37 Ohio St.3d 195, 197, 524 N.E.2d 887, 889, requires that the BTA ‘state what evidence it considered relevant in reaching its value determinations.’ In *Gen. Motors, supra*, 53 Ohio St.3d at 235, 559 N.E.2d at 1330, to the same effect, we said: ‘We can perform our duty to affirm reasonable, and to reverse unreasonable, determinations only when the BTA sets forth its findings and the basis therefor.’ We meant what we said. In our earlier remand, we intended for the BTA, in conformity with the *Howard* standard, and in compliance with our admonition for ‘clarification,’ to spell out the steps it took to arrive at the true value of GM’s real property for the years in question. This clarification includes (1) what amounts or percentages it used for its computation of true value, and the evidence of record supporting them; (2) what evidence it relied on in determining depreciation or obsolescence; and, finally, (3) why it made the particular selections in preference to some other approach, depreciation factor, obsolescence factor or appraiser which opposed that which was chosen by the BTA, and how and why it might have deviated from the amounts or percentages used by appraisers whose testimony was presented. Only after seeing this detailed explanation can we be assured that the BTA possessed and used the ‘experience’ and ‘expertise’ that it claimed for itself, and that its decision was not unreasonable or

unlawful.

The BTA's decision was unreasonable and unlawful because the BTA failed to identify a single appraisal-related fact upon which it relied to justify its determination of the true value of the property. The BTA's purely conclusory statement that "we find the appraisal to be competent and probative and the value conclusion reasonable and well-supported" does not satisfy any of this Court's requirements to state the facts upon which the BTA justifies its decision and is not consistent with the provisions of the Constitution and R.C. 5715.01.

**Proposition of Law No. 4:**

The BTA cannot accept an appraisal report that contains errors that affect the appraiser's opinion of value.

In the appeal at hand, the property owner's appraiser, Andrew Moye, made at least two errors that affected his opinion of value (which the BTA adopted) and that were clearly in conflict with the statutes and rules that provide how true value is to be determined.

First, Moye valued the subject property in his income approach using a "net lease" analysis, which means that the typical tenant will pay real estate taxes, insurance, and repairs and maintenance on the property. Moye then added a tax additur at the end of his appraisal report (appraisal, p. 36, Supp. 19), which is the equivalent of adding the taxes as an expense item of the property in his operating expense analysis, but he forgot to account for the tenant's reimbursement of this expense on the income side of his pro forma estimate of net operating income for the income approach (appraisal, p. 34, Supp. 18).

The *Dictionary of Real Estate Appraisal*, published by the American Institute of Real Estate Appraisers (1984), defines a "net lease" as "[a] lease in which the lessee pays all property charges,

e.g. taxes, insurance, assessments, maintenance, in addition to the stipulated rent” Appx. 16. A “net lease” is the same type of lease as a triple net lease described by this Court in *HIN, L.L.C. v. Cuyahoga County Bd. of Revision*, 138 Ohio St.3d 223; 2014-Ohio-523, fn. 1, as one in which “the tenant agrees to pay utilities, maintenance, real estate taxes, and insurance.”

As indicated in the Facts, Moye used four rent comparables in his income approach and all were “net” leases (appraisal, p. 8, Supp. 8) and his market rent estimate for the subject property was \$1.50 per square foot on a “net basis” (appraisal, p. 10, Supp. 9). Moye specifically says that his estimate of “market rent” for the subject property is “\$1.50 (net basis)” and he uses this figure to value the property (appraisal, p. 32, Supp. 16). Under this “net lease” approach, the tenant will pay the real estate taxes or reimburse the property owner for the taxes. If Moye then deducts real estate taxes, or any other expense that is either paid by the tenant under a “net lease,” as either an operating expense of the owner or in a tax additur added at the end of the income approach to the capitalization rate, Moye had to include the reimbursed or what he called “recaptured” income in his estimate of effective gross income. This is specifically what Moye failed to do (appraisal, p. 34, Supp. 18). This was a clear and simple error made by Moye. This simple error resulted in an improper reduction in Moye’s final opinion of value in the amount of \$527,000. The BTA erred in accepting Moye’s appraisal because Moye made this error in the appraisal.

A more accurate approach to the tax additur issue with net-lease properties taken by appraisers is to use a vacancy weighted tax additur that allows the property owner a partial deduction for real estate taxes that are attributable to the vacancy rate that the appraiser estimates for the property over the chosen holding period. For instance, Moye estimated that the vacancy rate in his income approach appraisal would be 10% (appraisal, p. 34, Supp. 18), which means that no tenant

would pay or reimburse the owner for ten percent of the real estate taxes. Thus, under a “net lease” the appraiser will still allow the property owner ten percent of the full tax additur as an addition to the capitalization rate. By failing to correct this clear error, the BTA accepted an appraisal that clearly undervalued the property. Specifically, Mr. Moye’s “Overall Capitalization Rate” of 11.82%  $(9.25 + 2.57)$  should have been 9.507  $(9.25 + (2.57 * 10\%))$ . Applying this corrected capitalization rate to Moye’s Net Operating Income figure of \$258,304 results in a value of \$2,716,987, \$526,987 more than Moye’s incorrect value prior to his other unlawful deduction for deferred maintenance.

It is not as if the BTA has not dealt with this specific issue before. In fact, back when the BTA was issuing decisions that actually analyzed the evidence before it and cited the reasons and basis for its final decision, the BTA routinely rejected the use of a full tax additur when the property was valued on a net-lease basis. See *Board of Educ. of the Hilliard City Schools v. Franklin Cty. Bd. of Revision*, (Apr. 10, 2014), BTA No. 2010-3826, 2014 Ohio Tax LEXIS 2288 (holding “However, we agree with the BOR that Mr. Smith’s failure to weight the tax additur used in his income capitalization approach for vacancy was improper. . .”); *Board of Educ. of the Hilliard City Schools v. Franklin Cty. Bd. of Revision* (July 31, 2013), BTA Nos. 2010-Q-845; 2010-Q-846; 2010-Q-847; 2010-Q-848, 2013 Ohio Tax LEXIS 3647 (“We agree with the BOE and find that the value resulting from the revised tax additur is a better indication of value.”). In fact, in *Board of Educ. of the Hilliard City Schools v. Franklin Cty. Bd. of Revision* (July 31, 2013), BTA Nos. 2010-Q-845; 2010-Q-846; 2010-Q-847; 2010-Q-848, 2013 Ohio Tax LEXIS 3647, issued before the BTA started issuing its new 2-page summary form decisions, the BTA went into great detail explaining its rationale on this matter stating:

As to Mr. Smith's appraisal of Spiegel Road, the BOE argues that he improperly used

a fully-loaded tax additur in his income capitalization approaches, even though he acknowledged that the subject properties are leased on a triple net basis. The BOE asserts that the use of a full tax additur therefore improperly decreases the total value conclusion, and that, rather, Mr. Smith should have only accounted for the taxes for which the owner would be liable, i.e., for the vacant portion of the property. To illustrate, Mr. Smith concluded to a NOI of \$ 603,763 and capitalized it with a cap rate of 7.25% plus a full tax additur of 2.92%, to arrive at a value of \$ 5,935,659. If the tax additur is reduced to account for only the 10% of taxes for which the owner would be liable (based on Mr. Smith's estimated vacancy rate), the loaded capitalization rate becomes 7.542%, and a total value of \$ 8,005,300 results. We agree with the BOE and find that the value resulting from the revised tax additur is a better indication of value.

This is the analysis that the BTA should have done in the present case and failed to do.

Second, Moye deducted from his final opinion of value (\$2,190,000) the dollar-for-dollar estimated cost to correct what he called "some deferred maintenance" (\$700,000), which he, himself, never verified or confirmed by an actual inspection of the property (appraisal, p. 36, Supp. 19). Moye estimated the value to correct these items by using the cost manual published by Marshall Valuation Services, and the estimated cost was to "replace" the roof, HVAC system, and the fire suppression system (appraisal, p. 18, Supp. 14).

Moye's dollar-for-dollar deduction of the estimated replacement cost of these items was illegal because there is no evidence in the record to show that the dollar-for-dollar cost has any relationship to the true value of the property because: (1) there is no evidence showing that the estimated cost to remedy the claimed defects results in "a diminution in value due to" defects on a dollar-for-dollar basis; and (2) there is no credible evidence to show that the items actually needed to be replaced as of tax lien day.

The BTA has (until the present appeal) consistently rejected an appraiser's claim that the estimated cost to cure a claimed defect in real property should be deducted on a dollar-for-dollar

basis from the appraiser's otherwise final opinion of value, and this Court has consistently affirmed the BTA's decisions on this issue. In *Hotel Statler v. Cuyahoga County Bd. of Revision*, 79 Ohio St.3d 299, 303, 681 N.E.2d 425 (1997), the appraiser "Kocinski also deducted one million dollars from the value determined by the income approach for the cost of asbestos removal." As is also the case in the present appeal, the appraiser "admitted that he had no personal knowledge of the information" about the alleged defect in the property. According to this Court:

In addition, Kocinski made his deduction as though there was a one-to-one relationship between the cost of asbestos removal and the value of the real property, although no evidence of such a relationship was presented. In *Throckmorton v. Hamilton Cty. Bd. of Revision* (1996), 75 Ohio St.3d 227, 228, 661 N.E.2d 1095, 1096, we stated, "Evidence of \* \* \* the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value." (79 Ohio St.3d, 304; 681 N.E.2d, 426)

In *General Motors Corp. v. Cuyahoga County Bd. of Revision*, 74 Ohio St.3d 513, 515, 660 N.E.2d 440 (1996), this Court likewise affirmed the BTA's decision to reject a dollar-for-dollar deduction from value of the property for the cost to cure alleged defects because "the BTA ruled that GM had not adequately established a diminution in value due to" the alleged defects and because "[t]he BTA could not find any evidence that these defects must be corrected at any given time or that the cost here must be deducted on a dollar-for-dollar basis without any supporting evidence on its effect on market value."

There was no evidence before the BTA to prove that Moye's \$700,000 estimated cost to remedy the alleged defects in the property resulted in a \$700,000 reduction in the true value of the property. Moye wrote his appraisal report on February 28, 2011 (appraisal, cover page and transmittal letter, Supp. 1-5) and as of that date the alleged defects in at least the HVAC and fire suppression system were still present (appraisal, p. 17, Supp. 13). Furthermore, as of May, 2011,

a tenant occupied the property and the roof had not been replaced (BOR hearing tape).

Interestingly enough, when the BTA actually writes a decision (not using the new pre-printed form decision) that pays some attention to the arguments made by the parties to the appeal, the BTA continues to reject any “dollar for dollar” deductions from value for the cost to cure alleged defects in the property that might arise from an appraiser’s claims of “depreciation, deficiencies, superadequacies, and other forms of obsolescence.” As late as April 21, 2014, the BTA cited *Hotel Statler v. Cuyahoga*, 79 Ohio St.3d 299, 681 N.E.2d 425 (1997), for the principle “rejecting the presence of a one-to-one relationship between cost and value when there exists no evidence of such a relationship.” See *Board of Education of the Columbus City Schools, vs. Franklin County Board of Revision, et al.* (April 21, 2014), BTA Nos. 2012-3902 and 2012-3903, 2014 Ohio Tax Lexis 2509. In another decision recent decision, the BTA held that the same kind of “deduction for lease-up costs was improper” again citing *Hotel Statler v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 299, 681 N.E.2d 425 (1997). See *Board of Education of the Hilliard City Schools vs. Franklin County Board of Revision, et al.* (March 14, 2014), BTA No. 2013-2746, 2014 Ohio Tax Lexis 1743.

The BTA erred in accepting Moye’s appraisal report because no evidence in the case suggested that Moye’s estimate of the cost to replace the items he claimed were deferred maintenance actually diminished the true value on a dollar-for-dollar basis. Furthermore, there was no evidence that these items actually needed to be replaced as of tax lien day, January 1, 2008, or that all such items needed to be replaced rather than repaired as of that date.

CONCLUSION

For the reasons set forth herein, this Court is respectfully requested to reverse the decision of the Board of Tax Appeals and to reinstate the Franklin County Auditor's original appraised value of \$2,750,000 because no evidence exists which proves that the property has any lower or different true value, or in the alternative to remand this appeal back to the BTA with instructions that it address the specific issues raised by Appellant in this appeal and that it render a decision that specifically determines the relevant facts of the matter, and that it set forth those facts in its decision. Finally, Appellant requests this Court to hold that the BTA's use of its new pre-printed form decision with the two sentences referred to by Appellant in this Brief is per se unreasonable and unlawful for the reasons set forth herein.

Respectfully Submitted,



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Mark Gillis (0066908)  
Rich & Gillis Law Group, LLC  
6400 Riverside Drive, Suite D  
Dublin, OH 43017  
PH: (614) 228-5822  
FAX: (614) 540-7476

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

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing merit brief was served on Mary Jane McFadden, McFadden, Winner, Savage & Segerman, 175 South Third Street, Suite 350 Columbus, Ohio, 43215, William J. Stehle, Assistant County Prosecutor, 373 South High Street, 20<sup>th</sup> Floor, Columbus, Ohio, 43215, and on Mike DeWine, Attorney General, 30 East Broad Street, 25th Floor, Columbus, Ohio, 43215, by regular U.S. mail with postage prepaid, this 6<sup>th</sup> day of August, 2014.



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Mark Gillis (0066908)  
Attorney for Appellant

ORIGINAL

IN THE SUPREME COURT OF OHIO

Board of Education of the Columbus  
City Schools,

Appellant,

v.

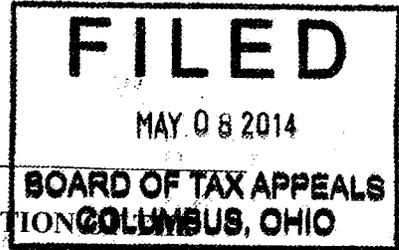
Franklin County Board of Revision,  
Franklin County Auditor, and 3600  
Sullivant Avenue, LLC

Appellees.

Case No.

14-0723

Appeal from the Ohio Board of  
Tax Appeals - Case No. 2011-2109



NOTICE OF APPEAL OF THE BOARD OF EDUCATION  
COLUMBUS CITY SCHOOLS

Mark Gillis (0066908)  
COUNSEL OF RECORD  
Rich & Gillis Law Group, LLC  
6400 Riverside Drive, Suite D  
Dublin, Ohio 43017  
(614) 228-5822  
Fax (614) 540-7474  
mgillis@richgillislawgroup.com

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

Mike Dewine (0009181)  
Ohio Attorney General  
30 East Broad Street, 17th Floor  
Columbus, Ohio, 43215  
Attorney for Appellee Tax Commissioner

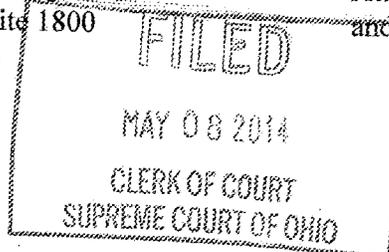
3600 Sullivant Avenue, LLC  
CSC-Lawyers Incorporating Service  
50 W. Broad Street, Suite 1800  
Columbus, Ohio 43215  
Appellee

Mary Jane McFadden, Esq. (0005777)  
McFadden, Winner, Savage & Segerman, LLP  
175 South Third Street, Suite 350  
Columbus, OH 43215-5188  
614-221-8868  
Fax 614-221-3985  
m\_mcfadden@earthlink.net

Attorneys for Appellee  
Sullivant Holdings, LLC

Ron O'Brien (0017245)  
Franklin County Prosecuting Attorney  
William J. Stehle (0077613)  
COUNSEL OF RECORD  
Assistant Prosecuting Attorney  
373 South High St., 20<sup>th</sup> Floor  
Columbus, OH 43215

Attorneys for Appellees County Auditor  
and Board of Revision



IN THE SUPREME COURT OF OHIO

Board of Education of the Columbus  
City Schools,

Appellant,

v.

Franklin County Board of Revision,  
Franklin County Auditor, and 3600  
Sullivant Avenue, LLC

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

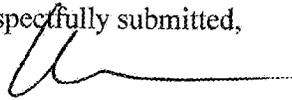
Appeal from the Ohio Board of  
Tax Appeals - Case No. 2011-2109

Appellees.

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

Now comes the Appellant, the Board of Education of the Columbus 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 *Board of Education of the Columbus City Schools v. Franklin County Board of Revision, Franklin County Auditor, and 3600 Sullivant Avenue, LLC, Inc.*, BTA Case No. 2011-2109, rendered on April 10, 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,



Mark Gillis (0066908)  
Rich & Gillis Law Group, LLC  
6400 Riverside Drive, Suite D  
Dublin, Ohio 43017  
(614) 228-5822

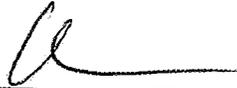
Attorneys for Appellant  
Board of Education of the Columbus City  
School District

EXHIBIT A - STATEMENT OF ERRORS

- (1) The Ohio Board of Tax Appeals (BTA) erred in holding that an appraisal is competent and probative evidence of value merely because: (1) “It provides an opinion 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 misapplied this Court’s ruling in *Dublin City Schools Bd. of Edn. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2013-Ohio-4543, *Motion for Reconsideration pending*.
- (4) The BTA erred by failing to specifically state the facts and figures upon which its decision is based.
- (5) The BTA erred by failing to independently determine the true value of the subject property.
- (6) The BTA erred by accepting an appraisal that contained improper mathematical calculations and impermissible deductions without any analysis whatsoever of these errors and why the BTA accepted them despite its rejection of the same errors and deductions in other cases.
- (7) 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.
- (8) The BTA erred by failing to accept the Auditor’s original value as the default 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 8 th day of May, 2014.

Mary Jane McFadden, Esq.  
McFadden, Winner, Savage & Segerman, LLP  
175 South Third Street, Suite 350  
Columbus, OH 43215

Mike Dewine  
Ohio Attorney General  
30 East Broad Street, 17th Floor  
Columbus, Ohio, 43215

Ron O'Brien  
Franklin County Prosecutor  
William J. Stehle, Esq.  
Assistant County Prosecutor  
373 South High St., 20<sup>th</sup> Floor  
Columbus, Ohio 43215

3600 Sullivant Avenue, LLC  
CSC-Lawyers Incorporating Service  
50 W. Broad Street, Suite 1800  
Columbus, Ohio 43215



---

Mark H. Gillis (0066908)  
Attorney for Appellant

IN THE SUPREME COURT OF OHIO

Board of Education of the Columbus  
City Schools,

Appellant,

v.

Franklin County Board of Revision,  
Franklin County Auditor, and 3600  
Sullivant Avenue, LLC

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

Appeal from the Ohio Board of  
Tax Appeals - Case No. 2011-2109

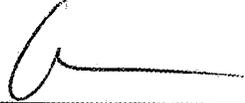
Appellees.

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 *Board of Education of the Columbus City Schools v. Franklin County Board of Revision, Franklin County Auditor, and 3600 Sullivant Avenue, LLC, Inc.*, BTA Case No. 2011-2109, rendered on April 10, 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

C O BOARD OF TAX APPEAL

Board of Education of the Columbus	)	CASE NO(S). 2011-2109
City Schools,	)	
	)	(REAL PROPERTY TAX)
Appellant(s),	)	
	)	DECISION AND ORDER
vs.	)	
	)	
Franklin County Board of Revision, et al.,	)	
	)	
Appellees.	)	

APPEARANCES:

- For the Appellant - Rich & Gillis Law Group, LLC  
Kelley A. Gorry  
6400 Riverside Drive, Suite D  
Dublin, OH 43017
- For the County Appellees - Ron O'Brien  
Franklin County Prosecuting Attorney  
William J. Stehle  
Assistant Prosecuting Attorney  
373 South High Street, 20th Floor  
Columbus, OH 43215
- For the Appellee Property Owner - McFadden, Winner, Savage & Segerman, LLP  
Mary Jane McFadden  
175 South Third Street, Suite 350  
Columbus, Ohio 43215-5188

Entered APR 10 2014

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

Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number(s) 010-212107-00. This matter is now considered upon the notice of appeal and the transcript certified by the BOR pursuant to R.C. 5717.01. The subject's total true value was initially assessed at \$2,750,000. A decrease complaint was filed with the BOR seeking a reduction in value to \$2,400,000. Appellant filed a countercomplaint in support of maintaining the auditor's values. The BOR issued a decision reducing the total true value of the subject property to \$1,520,000, which led to the present appeal.

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. While it is clear that valuation determinations made by county boards of revision are not presumptively correct, see, e.g., *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078, it is equally clear that a decision made by a board of revision

is entitled to some consideration & that an appellant has an affirmative burden to demonstrate entitlement to the value claimed. See, e.g., *Amsdell v. Cuyahoga Cty. Bd. of Revision* (1994), 69 Ohio St.3d 572.

In its recent decision in *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2013-Ohio-4543, the court reaffirmed the preceding principles when it considered a situation in which a board of revision had reduced the value of the property in issue, leading to an appeal by the affected board of education. The court first noted that because the board of revision adopted the property owner's evidence to establish value, the "burden of going forward with evidence [shifted] to the board of education on appeal to the BTA to present 'competent and probative evidence to make its case.' \*\*\* However, the board of education did not present any evidence to support its own valuation or the auditor's valuation and instead chose to attack [the owner's expert's] valuation through cross-examination. The board of education thereby failed to sustain its burden." Id. at ¶16. Continuing, the court held that "when a taxpayer presents evidence contrary to the auditor's valuation and no evidence is offered to support the auditor's valuation, the BTA may not simply reinstate the auditor's determination." See, also, *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237.

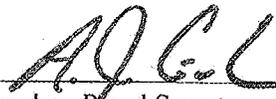
As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. \*\*\* However, such 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. Upon review of appellee's appraisal evidence, which provides an opinion of value as of tax lien date, was prepared for tax valuation purposes, and attested to by a qualified expert, we find the appraisal to be competent and probative and the value conclusion reasonable and well-supported. While we acknowledge the arguments made by the appellant, 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.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2008, were as follows:

TRUE VALUE	TAXABLE VALUE
\$1,520,000	\$532,000

It is the order of the Board of Tax Appeals that the subject property be assessed 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.J. Groeber, Board Secretary

ty days for persons to change residence in order to be eligible for election.

The governor shall give the persons responsible for apportionment two weeks advance written notice of the date, time, and place of any meeting held pursuant to this section.

(1967)

***CONTINUATION OF PRESENT DISTRICT BOUNDARIES.***

§14 The boundaries of House of Representatives districts and Senate districts from which representatives and senators were elected to the 107th General Assembly shall be the boundaries of House of Representatives and Senate districts until January 1, 1973, and representatives and senators elected in the general election in 1966 shall hold office for the terms to which they were elected. In the event all or any part of this apportionment plan is held invalid prior to the general election in the year 1970, the persons responsible for apportionment by a majority of their number shall ascertain and determine a plan of apportionment to be effective until January 1, 1973, in accordance with section 13 of this Article.

(1967)

***SEVERABILITY PROVISION.***

§15 The various provisions of this Article XI are intended to be severable, and the invalidity of one or more of such provisions shall not affect the validity of the remaining provisions.

(1967)

**ARTICLE XII: FINANCE AND TAXATION**

***POLL TAXES PROHIBITED.***

§1 No poll tax shall ever be levied in this state, or service required, which may be commuted in money or other thing of value.

(1851, am. 1912)

***LIMITATION ON TAX RATE; EXEMPTION.***

§2 No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value, except that laws may be passed to reduce taxes by providing for a reduction in value of the homestead of permanently and totally disabled residents, residents sixty-five years of age and older, and residents sixty years of age or older who are surviving spouses of deceased residents who were sixty-five years of age or older or permanently and totally disabled and receiving a reduction in the value of their homestead at the time of death, provided the surviving spouse continues to reside in a qualifying homestead, and providing for income and other qualifications to obtain such reduction. Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom,

general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

(1851, am. 1906, 1912, 1918, 1929, 1933, 1970, 1974, 1990)

***AUTHORITY TO CLASSIFY REAL ESTATE FOR TAXATION; PROCEDURES.***

§2a (A) Except as expressly authorized in this section, land and improvements thereon shall, in all other respects, be taxed as provided in Section 36, of Article II and Section 2 of this article

(B) This section does not apply to any of the following:

(1) Taxes levied at whatever rate is required to produce a specified amount of tax money or an amount to pay debt charges;

(2) Taxes levied within the one per cent limitation imposed by Section 2 of this article;

(3) Taxes provided for by the charter of a municipal corporation.

(C) Notwithstanding Section 2 of this article, laws may be passed that provide all of the following:

(1) Land and improvements thereon in each taxing district shall be placed into one of two classes solely for the purpose of separately reducing the taxes charged against all land and improvements in each of the two classes as provided in division (C)(2) of this section.

The classes shall be:

(a) Residential and agricultural land and improvements;

(b) All other land and improvements.

(2) With respect to each voted tax authorized to be levied by each taxing district, the amount of taxes imposed by such tax against all land and improvements thereon in each class shall be reduced in order that the amount charged for collection against all land and improvements in that class in the current year, exclusive of land and improvements not taxed by the district in both the preceding year and in the current year and those not taxed in that class in the preceding year, equals the amount charged for collection against such land and improvements in the preceding year.

(D) Laws may be passed to provide that the reductions made under this section in the amounts of taxes charged for the current expenses of cities, townships, school districts, counties, or other taxing districts are subject to the limitation that the sum of the amounts of all taxes charged for current expenses against the land and improvements thereon in each of the two classes of property subject to taxation in cities, townships, school districts, counties, or other types of taxing districts, shall not be less than a uniform per cent of the taxable value of the property in the districts to which the limitation applies. Different but uniform percentage limitations may be established for cities, townships, school districts, counties, and other types of taxing districts.

(1980)

## **5715.01 Tax commissioner to supervise assessments by county auditors - rules and procedure - county board of revision.**

(A) The tax commissioner shall direct and supervise the assessment for taxation of all real property. The commissioner shall adopt, prescribe, and promulgate rules for the determination of true value and taxable value of real property by uniform rule for such values and for the determination of the current agricultural use value of land devoted exclusively to agricultural use. The uniform rules shall prescribe methods of determining the true value and taxable value of real property and shall also prescribe the method for determining the current agricultural use value of land devoted exclusively to agricultural use, which method shall reflect standard and modern appraisal techniques that take into consideration: the productivity of the soil under normal management practices; the average price patterns of the crops and products produced to determine the income potential to be capitalized; the market value of the land for agricultural use; and other pertinent factors. The rules shall provide that in determining the true value of lands or improvements thereon for tax purposes, all facts and circumstances relating to the value of the property, its availability for the purposes for which it is constructed or being used, its obsolete character, if any, the income capacity of the property, if any, and any other factor that tends to prove its true value shall be used. In determining the true value of minerals or rights to minerals for the purpose of real property taxation, the tax commissioner shall not include in the value of the minerals or rights to minerals the value of any tangible personal property used in the recovery of those minerals.

(B) The taxable value shall be that per cent of true value in money, or current agricultural use value in the case of land valued in accordance with section 5713.31 of the Revised Code, the commissioner by rule establishes, but it shall not exceed thirty-five per cent. The uniform rules shall also prescribe methods of making the appraisals set forth in section 5713.03 of the Revised Code. The taxable value of each tract, lot, or parcel of real property and improvements thereon, determined in accordance with the uniform rules and methods prescribed thereby, shall be the taxable value of the tract, lot, or parcel for all purposes of sections 5713.01 to 5713.26 , 5715.01 to 5715.51 , and 5717.01 to 5717.06 of the Revised Code. County auditors shall, under the direction and supervision of the commissioner, be the chief assessing officers of their respective counties, and shall list and value the real property within their respective counties for taxation in accordance with this section and sections 5713.03 and 5713.31 of the Revised Code and with such rules of the commissioner. There shall also be a board in each county, known as the county board of revision, which shall hear complaints and revise assessments of real property for taxation.

(C) The commissioner shall neither adopt nor enforce any rule that requires true value for any tax year to be any value other than the true value in money on the tax lien date of such tax year or that requires taxable value to be obtained in any way other than by reducing the true value, or in the case of land valued in accordance with section 5713.31 of the Revised Code, its current agricultural use value, by a specified, uniform percentage.

Effective Date: 09-27-1983; 06-30-2005

**5703-25-06 Equalization procedures.**

(A) "True value in money" shall be determined, in the first instance, by the county auditor as the assessor of real property in the county on consideration of all facts tending to indicate the current or fair market value of the property including, but not limited to, the physical nature and construction of the property, its adaptation and availability for the purpose for which it was acquired or constructed or for the purpose for which it is or may be used, its actual cost, the method and terms of financing its acquisition, its value as indicated by reproduction cost less physical depreciation and all forms of obsolescence if any, its replacement cost, and its rental income-producing capacity, if any. The assessor shall likewise take into consideration the location of the property and the fair market value of similar properties in the same locality.

(B) At least once each six-year period the county auditor of each county, in conformity with the provisions of section 5713.01 of the Revised Code, shall view and appraise each parcel of real property and the improvements thereon in the county and this appraisal shall reflect the one hundred per cent true value in money of each parcel appraised, and the auditor shall place each parcel of real property on the tax duplicate at its "taxable value" which is thirty-five per cent of its true value in money.

(C) In the update year the county auditor shall determine whether each parcel of real property and the improvements thereon is appraised at its true value in money, as defined in paragraph (A) of rule 5705-25-05 of the Administrative Code, as of tax lien date of said year. If the auditor finds that there has been either an increase or decrease in value, the auditor shall adjust the tax records to show the true value in money of each parcel and the improvements thereon as well as the "taxable value" thereof, which "taxable value" shall be thirty-five per cent of the true value in money thereof as redetermined by the county auditor as of tax lien date.

(D) In making this triennial update of the true value in money and the "taxable value" of each parcel of real property, the county auditor shall be guided by sales of comparable property for a like use; the sales ratio and other related studies compiled by the tax commissioner for the three calendar years immediately preceding the update year; by the increase or decrease in current building costs and changes in construction technique both after the proper application of depreciation and obsolescence; by the increase or decrease in the net rental income, expenses, and services for comparable property since the year in which the preceding sexennial reappraisal had been completed; and such other indications of increase or decrease in value as may be pertinent, such as test or sample appraisals on a current basis, where sales of real property are limited or in question.

(E) In implementing any increase or decrease in valuation of real property pursuant to this rule or ordered by the tax commissioner pursuant to section 5715.24 of the Revised Code, the county auditor shall, when practicable, increase or decrease the taxable valuation of parcels in accordance with actual changes in valuation of real property which occur in different subdivisions, neighborhoods, or among classes of real property in the county. The auditor may increase or decrease the true or taxable value of any lot or parcel of real estate in any township, municipal corporation, or other taxing district by an amount which will cause all real property on the tax list to be valued as required by law, or the auditor may increase or decrease the aggregate value of all real property, or any class of real property, in the county, township, municipal corporation, or other taxing district, or in any ward or other division of a municipal corporation by a per cent or amount which will cause all property to be properly valued and assessed for taxation in accordance with section 36, Article II and section 2, Article XII, Ohio Constitution, and sections 5713.03 and 5715.01 of the Revised Code, and this rule.

(F) In determining the true value in the year of the sexennial reappraisal or update year of any tract, lot, or parcel of real estate if such tract, lot or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. However, the sale price in an arm's length transaction between a willing seller and a willing buyer shall not be considered the true value of the property sold if subsequent to the sale:

(1) The tract, lot, or parcel of real estate loses value due to some casualty;

Appx. 13

(2) An improvement is added to the property.

(G) The lien for taxes attaches to all real property on the first day of January. If a building, structure, fixture or other improvement to land is under construction on January first of any year, its valuation shall be based upon its value or percentage of completion as it existed on January first.

(H) When the county auditor revalues real property, notifications of the change in value shall be made as provided in section 5713.01 of the Revised Code.

Eff 12-28-73; 11-1-77; 9-18-03

Rule promulgated under: RC 5703.14

Rule authorized by: RC 5703.05

Rule amplifies: RC 5713.01 , 5715.01

Replaces: 5705-3-02

R.C. 119.032 review dates: 09/18/2008

(F) "Income approach" - An appraisal technique in which the anticipated net income is processed to indicate the capital amount of the investment which produces the net income. The reliability of this technique is dependent upon four conditions:

- (1) The reasonableness of the estimate of the anticipated net annual incomes;
- (2) The duration of the net annual income, usually the economic life of the building;
- (3) The capitalization (discount) rate;
- (4) The method of conversion (income to capital).

(G) "Market data approach" - An appraisal technique in which the market value estimate is predicated upon prices paid in actual market transactions and current listings, the former fixing the lower limit of value in a static or advancing market (price wise), and fixing the higher limit of value in a declining market; and the latter fixing the higher limit in any market. It is a process of correlation and analysis of similar recently sold properties. The reliability of this technique is dependent upon:

- (1) The degree of comparability of each property with the property under appraisal;
- (2) The time of sale;
- (3) The verification of the sale data;
- (4) The absence of unusual conditions affecting the sale.

loan balance so that the balance increases instead of decreasing over time. Mortgage instruments in which negative amortization occurs usually require larger down payments or higher interest rates.

**negative easement.** Property that is burdened by an easement. *Also called* the subservient estate. *See also* affirmative easement.

**negative leverage.** The increasing financial losses that result from borrowing when the cost of capital exceeds the return on capital; reverse leverage. Negative leverage magnifies losses, and positive leverage magnifies profits.

**negotiable order of withdrawal (NOW) accounts.** Interest-bearing accounts with checking privileges.

**neighborhood.** A group of complementary land uses.

**neighborhood shopping center.** A shopping center that provides for the sale of convenience goods, e.g., food, drugs, sundries; and personal services, e.g., laundry, dry cleaning, barbering, shoe repair; to satisfy the daily needs of the immediate neighborhood; has a supermarket as the principal tenant. The neighborhood center is the smallest type of shopping center, with a typical gross leasable area of 50,000 square feet; however, it may range in size from 30,000 to 100,000 square feet.

**net income before recapture.** *See* net operating income (NOI).

**net income multiplier.** The relationship between price or value and net operating income expressed as a factor; the reciprocal of the overall rate.

**net income ratio.** The ratio of net operating income to effective gross income; the complement of the operating expense ratio.

**net lease.** A lease in which the lessee pays all property charges, e.g., taxes, insurance, assessments, maintenance, in addition to the stipulated rent.

**net listing.** A listing in which the broker is entitled to any proceeds in excess of a specified selling price. [1]