

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
Sullivant Holdings, LLC,

Appellees.

Case No. 2014-0723

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

MERIT BRIEF OF APPELLEE SULLIVANT HOLDINGS, LLC

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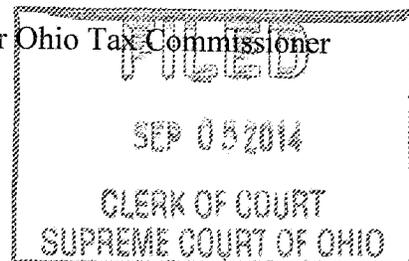


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INTRODUCTION

The Board of Tax Appeals (“BTA”) did not abuse its discretion by accepting the Moye appraisal as competent and probative evidence of the value of the property owned by appellee Sullivant Holdings, LLC (“Appellee”). Appellant Board of Education of the Columbus City School District (“Appellant”) failed to meet its burden of proof before the BTA. In fact, Appellant submitted no evidence at all either before the BTA or the Franklin County Board of Revision (“BOR”). Appellant would be better advised to put some effort into supporting its case with evidence, if any exists, rather than engaging in churlish attacks upon the BTA.

STATEMENT OF THE CASE

Appellee is the owner of a warehouse facility located on the west side of Columbus. The Franklin County Auditor determined that the true value of the property for tax year 2008 was \$2,750,000 (\$371,600 land; \$2,378,400 improvements) for a total taxable value of \$962,500. The former owner of the property, 3600 Sullivant Avenue, LLC, timely challenged that valuation, and Appellant filed a counter complaint.

A hearing was conducted by the BOR on May 24, 2011. (Statutory transcript certified to the BTA by the BOR (“S.T.”), Ex. 13.) Appellee submitted the testimony and written report of Andrew J. Moye, MAI, of Crown Appraisal Group, as well as other information about the property. Mr. Moye opined that the market value of the property as of January 1, 2008 was \$1,520,000. (S.T., Ex. 9.) Counsel for Appellant participated in the BOR hearing but did not present any witnesses or exhibits.

On July 7, 2011, the three-member BOR unanimously adopted Mr. Moye’s appraisal of \$1,520,000 as the true value of the property (\$371,600 land; \$1,148,400 improvements) for a total taxable value of \$532,000. (S.T., Ex. 13, Digital Recording.) The BOR issued notice of its

decision on July 19, 2011. (S.T., Ex. 10.) Appellant filed a timely notice of appeal to the BTA on August 15, 2011. (S.T., Ex. 11.)

On December 6, 2012, the BTA issued a notice scheduling the hearing of the appeal for February 27, 2013. Appellee filed its witness list on February 13, 2013 as required by Ohio Adm. Code 5717-1-15(I). Appellant did not file a list of witnesses or exhibits. Appellee's pre-hearing statement was filed on February 20, 2013 as permitted by the notice of hearing issued by the BTA. Appellant did not file a pre-hearing statement. Counsel for Appellant appeared at the hearing on February 27, 2013 without any witnesses or other evidence to offer. At the request of Appellant, the Hearing Examiner granted leave for Appellant to file a brief on or before March 4, 2013, and March 11, 2013 was set as the deadline for the filing of Appellee's response.

The unanimous Decision and Order of the BTA was issued on April 10, 2014. Like the BOR, the BTA adopted the Moye appraisal and found that the true and taxable values of the property were \$1,520,000 and \$532,000, respectively, as of January 1, 2008. Appellant timely filed a Notice of Appeal with the BTA and the Clerk of this Court on May 8, 2014.

STATEMENT OF FACTS

Appellee called James Thomas and Andrew Moye to testify at the hearing conducted by the BOR. (S.T., Ex. 13, Digital Recording.) Mr. Thomas is associated with Just Results Real Estate and has represented Appellee with respect to efforts to sell and lease the property since 2006. He has knowledge of the property dating back to 1957 when the warehouse facility was built. (S.T., Ex. 13, Digital Recording at 9:37-9:38 and 9:41-9:44 a.m.)

Mr. Moye has been a professional appraiser since 1982. He is certified in Ohio and eleven other states, and he has earned the MAI designation. (Supplement to Merit Brief of Appellee

Sullivant Holdings, LLC (“Appellee’s Supp.”), pp. 14-16.) His qualifications were stipulated at the BOR hearing. (S.T., Ex. 13, Digital Recording at 9:43-9:44 a.m.)

As of January 1, 2008, the tax lien date, the property was listed for sale at \$1,650,000 and was occupied by a tenant. (Appellee’s Supp., pp. 3 and 6.) That tenant, however, did not pay the rent and was subsequently evicted. (S.T., Ex. 13, Digital Recording at 10:05-10:06 a.m.)

Mr. Moye performed both a sales comparison and an income approach. He determined that the cost approach was not applicable because of the age of the improvements. (Appellee’s Supp., p. 7.)

Mr. Moye’s sales comparison approach resulted in a value of \$2,220,000 if, but only if, significant deferred maintenance problems affecting the property were cured. His income approach concluded the value would be \$2,190,000 assuming that no deferred maintenance existed. Mr. Moye developed a cost of \$700,000 to cure the deferred maintenance items by consulting Marshall Valuation Services, a standard appraisal reference. He adjusted the conclusions of his sales comparison and income approaches accordingly to “as is” values of \$1,520,000 and \$1,490,000, respectively. Mr. Moye determined the sales comparison approach was the best method because the property is more desirable to an owner occupant than to a landlord holding the property for lease. (S.T., Ex. 13, Digital Recording, 9:49-9:51 a.m.) He therefore selected the higher figure of \$1,520,000 as his final opinion of value. (Appellee’s Supp., pp. 4-5, 8-9, 11-12.)

Mr. Thomas testified an expenditure of \$700,000 was “well short” of what the building actually needed and would only address “immediate fixes.” He stated the cost of addressing all of the deficiencies would be approximately \$1,200,000. (S.T., Ex. 13, Digital Recording at 10:00-10:02 and 10:13-10:14 a.m.) Based upon his experience dealing with prospective tenants, Mr.

Thomas was certain that spending just \$700,000, as estimated by Mr. Moye, would not attract a tenant willing to pay more rent. (S.T., Ex. 13, Digital Recording at 10:12-10:15 a.m.)

LAW AND ARGUMENT

I. Standard of Review

This Court does “not sit either as a ‘super’ Board of Tax Appeals or as a trier of fact de novo.” *Youngstown Sheet & Tube Co. v. Mahoning Cty. Bd. of Revision*, 66 Ohio St.2d 398, 400, 422 N.E.2d 846 (1981). R.C. 5717.04 defines the jurisdiction of the Court as follows:

If upon hearing and consideration of such record and evidence the court decides that the decision of the board appealed from is reasonable and lawful it shall affirm the same, but if the court decides that such decision of the board is unreasonable or unlawful, the court shall reverse and vacate the decision or modify it and enter final judgment in accordance with such modification.

“The BTA has discretion in determining how to weigh evidence and, unless the BTA abuses its discretion, [this Court] will affirm its decision.” *Hotel Statler v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 299, 304, 681 N.E.2d 425 (1997), citing *Orange City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 74 Ohio St.3d 415, 659 N.E.2d 1223 (1996). Because the BTA did not abuse its discretion, and because its Decision and Order is neither unreasonable nor unlawful, this Court should affirm.

II. Appellant Failed to Sustain Its Burden of Proof Before the BTA

Under clear and well-established Ohio law, Appellant had the burden of going forward with evidence before the BTA. Appellant failed to sustain its burden and, indeed, did not even attempt to do so.

In *Dublin City Schools v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 193, 2013-Ohio-4543 at ¶¶ 15-16 the Court stated:

When a party appeals a board of revision's decision to the BTA, the appellant, whether it be a taxpayer or a board of education, has the burden to prove its right to a reduction or increase in the board of revision's determination of value. *Columbus City School Dist. Bd. Of Edn. v. Franklin Cty. Bd. Of Revision*, 90 Ohio St.3d 564, 566, 740 N.E.2d 276 (2001). To prevail on appeal before the BTA, appellant must present "competent and probative evidence" supporting the value the appellant asserts. *Id.*

In this case, East Bank [the taxpayer] had the burden to prove its right to a reduction when it challenged the auditor's valuation of the 21 units before the board of revision. See *Dayton-Montgomery [Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948, 865 N.E.2d 22] at ¶ 15. To meet this burden, East Bank presented testimony from its managing partner and an appraiser. The board of revision adopted East Bank's valuation, thereby shifting the burden of going forward with evidence to the board of education on appeal to the BTA to present "competent and probative evidence to make its case." *Columbus City School Dist.* at 566. 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 Horner's [the taxpayer's appraiser] valuation through cross-examination. The board of education thereby failed to sustain its burden.

On motion for reconsideration, the school board challenged whether it was required to offer additional evidence at the BTA hearing in order to meet its burden of proof, but this Court declined to revisit that well-settled issue. *Dublin City Schools v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 212, 2014-Ohio-1940, ¶ 10.

This principle clearly applies in the case *sub judice*. Appellant not only failed to present clear and competent evidence before the BTA in support of its position, it failed to present any evidence at all that the auditor's valuation was correct. Accordingly, there is absolutely no basis for Appellant's demand that this Court reinstate the auditor's valuation of \$2,750,000.

III. The BTA Acted Reasonably and Lawfully in Rejecting Appellant's Criticisms of the Moyer Appraisal

A. Deferred Maintenance Deductions Reasonably Reflect the Decrease in True Value and Are Proper

In *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227, 228, 661 N.E.2d 1095 (1996), the Court stated:

Evidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value. It is the decrease in true value that may result from the need for repairs that is the important factor to be determined by the BTA.

In the instant case, taking all of the evidence into account, the BOR and BTA were correct to accept the dollar-for-dollar deduction of \$700,000 developed by Mr. Moyer because that figure was a reasonable estimate of the decrease in true value.

The building components requiring repair or replacement were the roof and the HVAC and fire suppression systems. (Appellee's Supp., pp. 4-5.) Each of these components is essential for the property to satisfactorily perform as a warehouse facility. At the BOR hearing, Mr. Moyer was specifically asked whether performing the deferred maintenance would add \$700,000 to the value of the property, and he answered unequivocally in the affirmative if the building is owner occupied. (S.T., Ex. 13, Digital Recording at 10:08-10:11 a.m.) He further stated that a higher amount should have been deducted for deferred maintenance in his income approach (which would be the more appropriate method in arriving at a value for a non-occupying landlord owner) to account for the entrepreneurial incentive to earn a return on investment. If he had made that further adjustment, the value indicated by his income approach would have been lower than \$1,490,000, but he did not go through that calculation because he decided the value of \$1,520,000 indicated by the sales comparison approach was the more accurate method under the circumstances. (S.T., Ex. 13, Digital Recording at 9:55-9:57 a.m.) Mr. Moyer also noted that the \$700,000 adjustment was conservative

compared to Mr. Thomas' estimate of the \$1,200,000 for the cost of needed renovations. (S.T., Ex. 13, Digital Recording at 10:08-10:09 a.m.)

Appellant's reliance upon *Gen. Motors Corp v. Cuyahoga Cty. Bd. of Revision*, 74 Ohio St.3d 513, 660 N.E.2d 440 (1996), is misplaced for two reasons. First, the appraiser for the board of education in that case developed cost figures by consulting the Marshall valuation manual, just as Mr. Moye did in estimating the cost of deferred maintenance. This Court held that the BTA did not abuse its discretion by accepting information attributable to that " 'tried and true generally accepted technique often employed in the appraisal field.' " (*Id.* at 514.) Second, the Court addressed an issue regarding a deduction for deferred maintenance as follows:

Kocinski [the board's appraiser] did not testify about any additional deduction for roof repair. Thus, the BTA could have selected no additional deduction or a deduction up to the nine million dollar figure that Pickering [the taxpayer's appraiser] proposed. The BTA was well within its authority to select an amount in the range supported by the testimony. Accordingly, the evidence supports the BTA's finding of one million dollars as additional roof depreciation.

Id. at 515.

The *only* evidence before the BTA was Mr. Moye's estimate of \$700,000 (derived from Marshall) and Mr. Thomas' estimate of \$1,200,000. The BTA was well within its authority to select the amount at the lower end of that range as a proper amount to adjust for deferred maintenance.

In *Gen. Motors*, the taxpayer also claimed a deduction for the cost of asbestos removal. The BTA found no evidence that the asbestos had to be removed at a given time or that the cost translated to a dollar-for-dollar reduction in the value of the property. This Court held the BTA had not abused its discretion by disallowing the deduction. (*Id.* at 515.) Unlike the asbestos removal costs discussed in *Gen. Motors*, the repair costs in this case were necessary for the property to be used for its intended purpose as a warehouse. As Mr. Moye concluded, no sensible

buyer would purchase the subject property without taking the deferred maintenance items affecting vital components of the building into account.

The issue before the BTA was *not* whether an adjustment attributable to the deferred maintenance items was appropriate. There is no question that the defects existed and obviously impacted the price a buyer would be willing to pay for the property. The question is the *amount* of the adjustment. Appellant's criticism goes to the weight, not the admissibility, of Mr. Moye's professional opinion regarding the impact of the deferred maintenance upon true value. Appellant challenges the \$700,000 figure *but it failed to submit any evidence whatsoever that a lesser deduction would be more accurate or reasonable*. In the absence of any competent and probative evidence challenging Mr. Moye's analysis, the BTA did not abuse its discretion by accepting his adjustment for deferred maintenance.

B. Tax Additur Has No Impact Upon Final Value Conclusion

At the BOR hearing, counsel for the Appellant inquired on cross-examination whether Mr. Moye's income approach included a tax additur. Mr. Moye responded in the affirmative and directed counsel to the calculation set forth in his written report. (Appellee's Supp., p. 12, and Ex. 13, Digital Recording at 9:57-9:59 a.m.) Counsel for Appellant did not ask how, if at all, real estate taxes were involved in the calculation of net operating income, and counsel did not suggest a decreased tax additur should have been utilized. So, Mr. Moye had no opportunity to respond to the challenge to his income analysis raised for the first time in the brief Appellant filed with the BTA. Ohio Adm. Code 5703-25-07(D)(2) requires utilization of a capitalization rate adjusted by the tax additur when performing the income approach, and nothing in Mr. Moye's appraisal violates that directive.

Appellant represents in its Statement of Facts that Mr. Moye “forgot” to include real estate taxes as an income item in calculating net operating income, and that a “vacancy weighted tax additur” was more appropriate than the tax additur he utilized. (Merit Brief of Appellant, pp. 2-4.) It would have been easy enough to ask Mr. Moye about these assertions at the BOR hearing, but counsel for the Appellant did not do so. Furthermore, Appellant did not call any witness before either the BOR or the BTA to offer evidence in support of these assertions. Rather than address challenges to Mr. Moye’s appraisal in a forthright manner, Appellant prefers to play “hide the ball” and to deny Mr. Moye a fair opportunity to respond. The tax-additur argument is simply another instance of Appellant failing to sustain its burden of proof before the BTA and should be rejected for that reason alone.

Appellant’s contention that “the BTA routinely rejected the use of a full tax additur when the property was valued on a net-lease basis” is incorrect. (Merit Brief of Appellant, p. 18.) In its brief submitted to the BTA, Appellant relied upon *Board of Edn. of the Hilliard City Schools v. Franklin Cty. Bd. of Revision*, BTA No. 2007-M-818, 2009 Ohio Tax LEXIS 1884 (Dec. 15, 2009), for the same flawed proposition it advances here, i.e., that it is not proper to utilize a full tax additur unless real estate taxes are included in pro forma income. What the BTA actually held regarding the tax additur was the following:

The BOE claims that the property owner’s appraiser erred when he applied the tax additur in full. However, the property owner’s appraiser included both pass-through income and expenses. Therefore, the application of a tax additur to the entire value should not cause the value to be different from the non-application of the tax additur.

Id., slip opinion at p. 14.

Nowhere in the decision does the BTA state that utilizing a full tax additur requires inclusion of real estate taxes as pass-through income. The property owner’s appraiser included some pass-

through reimbursements as income and expenses in calculating pro forma net operating income, but excluded real estate taxes because they were included via the tax additur in his capitalization rate. (*Id.* at pp. 7-8.) Mr. Moye utilized exactly the same methodology in his income approach. (Appellee's Supp., pp. 10-12.) Thus, there is no basis for Appellant's assertion that Mr. Moye utilized a methodology that had been "routinely rejected" by the BTA.

The two tax-additur cases now cited by Appellant do not support a determination that the Decision and Order under review is unreasonable or unlawful. The BTA recognized that the tax additur impacts only the income approach performed by the appraiser but has no effect whatsoever on the sales comparison analysis. In both cases, the BTA accepted the sales comparison valuation as the true value of the property. *Board of Educ. of Hilliard City Schools v. Franklin Cty. Bd. of Revision*, BTA No. 2010-3826, 2014 Ohio Tax LEXIS 2288 (Apr. 10, 2014), and *Board of Educ. Of the Hilliard City Schools v. Franklin Cty. Bd. of Revision*, BTA Nos. 2010-Q-845; 2010-Q-846; 2010-Q-847; 2010-Q-848, 2013 Ohio Tax LEXIS 3647 (Jul. 31, 2013). For the reasons stated in his report and testimony before the BOR, Mr. Moye adopted the result of his sales comparison approach as his final opinion of value. Therefore, even assuming there were any evidence that the tax additur he utilized was incorrect, the valuation determination of the BTA would not be altered because it is the result of Mr. Moye's sales comparison approach, not his income analysis.

C. Interior of the Property Was Inspected

Mr. Moye's appraisal report states that his "most recent inspection of the property" was conducted on November 19, 2010. (Appellee's Supp., p. 2.) The report does not state, as Appellant assumes, that the inspection was limited to the exterior of the building. Mr. Moye was not directly asked at the BOR hearing whether he had inspected the interior. (S.T., Ex. 13, Digital Recording.) The record is clear, however, that he had done so.

A member of the BOR inquired why Mr. Moye's appraisal report did not include photographs of the building's interior. Mr. Moye responded that he had taken interior photographs but that they had been inadvertently omitted from his written report. It was agreed that those photographs would be submitted to the BOR subsequent to the hearing. (S.T., Ex. 13, Digital Recording at 10:14-10:15 a.m.) Appellant's assertion that Mr. Moye did not inspect the interior of the building is directly refuted by the record of proceedings before the BOR.

IV. Basis for the Decision of the BTA Is Clear and Reviewable

Appellant's contention that the BTA did not adequately explain the basis for its decision rings hollow. The Decision and Order states:

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.

Id. at p. 2.

Since the Appellant did not submit an appraisal, there is no doubt that the BTA is referring to the appraisal performed by Mr. Moye. His written report and testimony before the BOR are included in the record, so there is no impediment to this Court's task of determining whether the BTA abused its discretion by accepting Mr. Moye's valuation.

The cases cited by Appellant are distinguishable. For instance, in the seminal case of *Howard v. Cuyahoga Cty. Bd. of Revision*, 37 Ohio St.3d 195, 524 N.E.2d 887 (1988), the evidence before the BTA was much more complicated:

The BTA in the instant cause had much evidence before it, including the testimony of two appraisers and evidence concerning a recent sale. While the sale price is not necessarily the property's true value, it is an indication of that value. Surprisingly, though, the BTA's valuation is \$741,000 higher than the purchase price of a sale of the property that occurred after the valuation date. The BTA did not explain this discrepancy, and we are unable to understand how such a value can be found. [Citations omitted.]

The witnesses' opinions on the valuation of the property were divergent. 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.

Id. at 197.

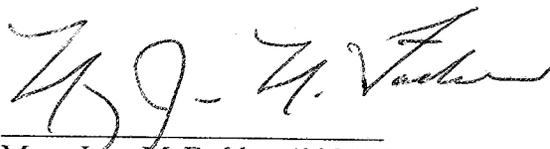
This holding obviously has no application here because Appellant submitted *no* evidence. It is crystal clear that the evidence considered relevant and accepted by the BTA was the Moye appraisal.

Another case relied upon by Appellant in which the valuation of 21 condominium units was contested is also inapposite. *Dublin City Schools Bd. of Edn. v Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 212, 2014-Ohio-1940. The BTA determined that the appraisal submitted by the taxpayer should be rejected because its methodology was suitable for determining investment value, not real market value. The appraiser assumed a bulk sale of all 21 units rather than individual sales of the condominiums. This bulk-sale methodology was not consistent with R.C. 5311.11 which requires that each unit of a condominium be deemed a separate parcel for taxation purposes. Upon reconsideration, this Court held that the BTA had correctly rejected the taxpayer's appraisal because the bulk-sale method was not probative of the separate taxable values of the 21 parcels. (*Id.* at ¶¶ 16-29.) In contrast, the Moye appraisal analyzes a single tax parcel and utilizes standard valuation methodology, so it is not flawed in the manner that disqualified the taxpayer's appraisal in *Dublin City Schools, supra*.

CONCLUSION

Because the BTA did not abuse its discretion in weighing the evidence, and because its determination is neither unreasonable nor unlawful, the Decision and Order should be affirmed.

Respectfully submitted,

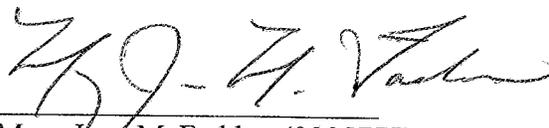


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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing merit brief was served on Mark Gillis, Esq., Rich & Gillis Law Group, LLC, 6400 Riverside Drive, Suite D, Dublin, OH 43017, William J. Stehle, Assistant County Prosecutor, 373 South High Street, 20th Floor, Columbus, OH 43215, and Mike DeWine, Attorney General, 30 East Broad Street, 25th Floor, Columbus, OH 43215, by regular U.S. mail, postage prepaid, this 5th day of September, 2014.



Mary Jane McFadden (0005777)
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§ 5311.11. Each unit is separate parcel for taxation and assessment purposes.

Ohio Statutes

Title 53. REAL PROPERTY

Chapter 5311. CONDOMINIUM PROPERTY

Current through June 20, 2014

§ 5311.11. Each unit is separate parcel for taxation and assessment purposes

Each unit of a condominium property and the undivided interest in the common elements appurtenant to it is deemed a separate parcel for all purposes of taxation and assessment of real property, and no other unit or other part of the condominium property shall be charged with the payment of those taxes and assessments.

Cite as R.C. § 5311.11

History. Effective Date: 07-20-2004

§ 5717.04. Appeal from certain decisions of board of tax appeals to supreme court; parties who may appeal; certification.

Ohio Statutes

Title 57. TAXATION

Chapter 5717. APPEALS

Current through June 20, 2014

§ 5717.04. Appeal from certain decisions of board of tax appeals to supreme court; parties who may appeal; certification

This section does not apply to any decision and order of the board made pursuant to section 5703.021 of the Revised Code. Any such decision and order shall be conclusive upon all parties and may not be appealed.

The proceeding to obtain a reversal, vacation, or modification of a decision of the board of tax appeals shall be by appeal to the supreme court or the court of appeals for the county in which the property taxed is situate or in which the taxpayer resides. If the taxpayer is a corporation, then the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the supreme court or to the court of appeals for the county in which the property taxed is situate, or the county of residence of the agent for service of process, tax notices, or demands, or the county in which the corporation has its principal place of business. In all other instances, the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the court of appeals for Franklin county.

Appeals from decisions of the board determining appeals from decisions of county boards of revision may be instituted by any of the persons who were parties to the appeal before the board of tax appeals, by the person in whose name the property involved in the appeal is listed or sought to be listed, if such person was not a party to the appeal before the board of tax appeals, or by the county auditor of the county in which the property involved in the appeal is located.

Appeals from decisions of the board of tax appeals determining appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be instituted by any of the persons who were parties to the appeal or application before the board, by the person in whose name the property is listed or sought to be listed, if the decision appealed from determines the valuation or liability of property for taxation and if any such person was not a party to the appeal or application before the board, by the taxpayer or any other person to whom

the decision of the board appealed from was by law required to be sent, by the director of budget and management if the revenue affected by the decision of the board appealed from would accrue primarily to the state treasury, by the county auditor of the county to the undivided general tax funds of which the revenues affected by the decision of the board appealed from would primarily accrue, or by the tax commissioner.

Appeals from decisions of the board upon all other appeals or applications filed with and determined by the board may be instituted by any of the persons who were parties to such appeal or application before the board, by any persons to whom the decision of the board appealed from was by law required to be sent, or by any other person to whom the board sent the decision appealed from, as authorized by section 5717.03 of the Revised Code.

Such appeals shall be taken within thirty days after the date of the entry of the decision of the board on the journal of its proceedings, as provided by such section, by the filing by appellant of a notice of appeal with the court to which the appeal is taken and the board. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten days of the date on which the first notice of appeal was filed or within the time otherwise prescribed in this section, whichever is later. A notice of appeal shall set forth the decision of the board appealed from and the errors therein complained of. Proof of the filing of such notice with the board shall be filed with the court to which the appeal is being taken. The court in which notice of appeal is first filed shall have exclusive jurisdiction of the appeal.

In all such appeals the commissioner or all persons to whom the decision of the board appealed from is required by such section to be sent, other than the appellant, shall be made appellees. Unless waived, notice of the appeal shall be served upon all appellees by certified mail. The prosecuting attorney shall represent the county auditor in any such appeal in which the auditor is a party.

The board, upon written demand filed by an appellant, shall within thirty days after the filing of such demand file with the court to which the appeal is being taken a certified transcript of the record of the proceedings of the board pertaining to the decision complained of and the evidence considered by the board in making such decision.

If upon hearing and consideration of such record and evidence the court decides that the decision of the board appealed from is reasonable and lawful it shall affirm the same, but if the court decides that such decision of the board is unreasonable or unlawful, the court shall reverse and vacate the decision or modify it and enter final judgment in accordance with such modification.

The clerk of the court shall certify the judgment of the court to the board, which shall certify such judgment to such public officials or take such other action in connection therewith as is required to give effect to the decision. The "taxpayer" includes any person required to return any property for taxation.

Any party to the appeal shall have the right to appeal from the judgment of the court of appeals on questions of law, as in other cases.

Cite as R.C. § 5717.04

³**History.** Amended by 130th General Assembly File No. 37, HB 138, §1, eff. 10/11/2013.

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 10/16/2009.

Effective Date: 10-05-1987

5703-25-07 Appraisals.

(A) Each general reappraisal of real property in a county shall be initiated by an entry and order of the tax commissioner directed to the county auditor of the county concerned which shall specify the time for beginning and completing the appraisal as provided by section 5715.34 of the Revised Code. In January of each year the commissioner shall adopt a journal entry wherein is set forth the status of reappraisals in the various counties and the tax year upon which the next reappraisal and the next triennial update of real property values in each county shall be completed.

(B) Each lot, tract, or parcel of land, and all buildings, structures, fixtures, and improvements to land shall be appraised by the county auditor according to true value in money, as it or they existed on tax lien date of the year in which the property is appraised. It shall be the duty of the county auditor to so value and appraise the land and improvements to land that when the two separate values for land and improvements are added together, the resulting value indicates the true value in money of the entire property.

(C) Land shall be valued in accordance with the provision of rule 5703-25-11 of the Administrative Code. All land shall be valued according to its true value except where the owner has filed an application under section 5713.31 of the Revised Code for such land to be valued for real property tax purposes at the current value the land has for agricultural use, and the land is qualified to be so valued and taxed as provided in section 5713.30 of the Revised Code.

Buildings, structures, fixtures, and improvements to land shall be valued in accordance with the provisions of rule 5703-25-12 of the Administrative Code.

(D) In arriving at the estimate of true value the county auditor may consider the use of any or all of the recognized three approaches to value:

(1) The market data approach - The value of the property is estimated on the basis of recent sales of comparable properties in the market area after allowance for variation in features or conditions. The use of the gross rent multiplier is an adaptation of the market approach useful in appraising rental properties such as apartments. This is most applicable to the types of property that are sold often.

(2) The income approach - The value is estimated by capitalizing the net income after expenses, including normal vacancies and credit losses. While the contract rental or lease of a given property is to be considered the current economic rent should be given weight. Expenses should be examined for extraordinary items. In making appraisals by the income approach for tax purposes in Ohio provision for expenses for real property

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taxes should be made by calculating the effective tax rate in the given tax district as defined in paragraph (E) of rule 5703-25-05 of the Administrative Code, and adding the result to the basic interest and capitalization rate. Interest and capitalization rates should be determined from market data allowing for current returns on mortgages and equities. The income approach should be used for any type of property where rental income or income attributed to the real property is a major factor in determining value. The value should consider both the value of the leased fee and the leasehold.

(3)⁵ The cost approach - The value is estimated by adding to the land value, as determined by the market data or other approach, the depreciated cost of the improvements to land. In some types of special purpose properties where there is a lack of comparable sales or income information this is the only approach. Due to the difficulties in estimating accrued depreciation, older or obsolete buildings value estimates often vary from the market indications.

(E) Ideally, all three approaches should be used but due to cost and time limitations, the cost approach as set forth in these rules is generally an appropriate first step in valuation for tax purposes. Values obtained by the cost approach should always be checked by the use of at least one of the other approaches if possible. In the event the auditor uses approaches of estimating true value other than the cost approach appropriate notations shall be shown on the property record.

(F) The appraiser is urged to refer to standard appraisal references as well as the excellent publications by many trade associations, etc., which provide valuable income, expense, and other types of information that may be used as bench marks in making the appraisal.

(G) Nothing set out in these rules shall be construed to prohibit the county auditor from the use of advanced techniques, such as computer assisted appraisals, in the application of the three approaches to the appraisal of real property for tax purposes. However, such programs must be submitted to the tax commissioner for the approval on an individual basis.

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: 5705-3-03

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

5717-1-15 Hearings.

(A) Appeals pending before the board will be decided upon the record developed before the lower tribunal unless new evidence has become available since the lower tribunal's proceedings and the parties request a hearing in order to present the new evidence. The board, as required by statute or at its discretion, may schedule an appeal for hearing and issue written notice thereof to the parties or their counsel of record by ordinary mail or electronic means.

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(B) For good cause shown, hearings may be continued by the board. The granting of a continuance is within the sound discretion of the board.

(C) Requests for continuances shall be filed, in writing, at least twenty-one days prior to the scheduled hearing date, unless otherwise permitted by the board. If a continuance is requested for the reason that counsel or a witness is scheduled to appear for hearing on the same date before the board or another tribunal, a copy of the tribunal's scheduling notice should be attached to the request.

(D) Before seeking a continuance of a scheduled hearing from the board, a party shall provide notice to all other parties, and attempt to obtain their consent. The party requesting a continuance shall advise this board in its request whether any party objects to its request. Any objection to a continuance must be filed, in writing, within three days of the filing of the continuance request, unless otherwise ordered by the board. Absent good cause shown, no more than two continuances will be granted in any appeal.

(E) As a condition to any continuance that may be granted, the board may require the parties to supply a definite date for hearing, as agreed upon by the parties and subject to the board's approval.

(F) A party may waive, in writing, its right to appear at a hearing. Where all parties have waived their right to a hearing, the board may proceed to decide the appeal upon the record. A party shall clearly indicate its intent to waive hearing through separate notice, served on all parties, and shall file such waiver at least three days in advance of a scheduled hearing.

(G) All hearings, except those on the small claims docket, shall proceed in similar manner to a civil action, with witnesses to be sworn and subject to cross-examination. The nature, scope, and length of examination of witnesses is within the discretion of the presiding attorney examiner or board member(s).

(H) All hearings before the board shall be open to the public. Hearings may be recorded and such recordings shall be made available for examination at the board's office.

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(I) Each party shall identify its witnesses to all parties and the board consistent with the period set forth in the applicable case management schedule established in rules 5717-1-06 and 5717-1-07 of the Administrative Code, unless otherwise ordered . Each party shall provide copies of the documentary exhibits it plans to offer into evidence (reduced in size, if necessary) to all parties consistent with the period set in the applicable case management schedule, unless otherwise ordered .

Effective: 10/09/2013

Promulgated Under: 5703.14

Statutory Authority: 5703.14

Rule Amplifies: 5703.02

Prior Effective Dates: 10/20/1977, 3/24/1989, 3/1/1996, 6/1/2002, 1/14/2005, 2/1/2009