

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 Donald W. Beck,

Appellees.

Case No. 2014-0721

Appeal from the Ohio Board of Tax Appeal - Case Nos. 2013-4176, 2013-4177 and 2013-4178

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

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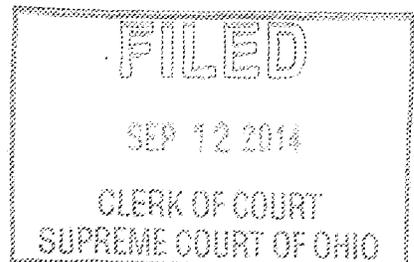


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STATEMENT OF THE CASE AND FACTS

This is an appeal from the Ohio Board of Tax Appeals (BTA) involving the determination of the true value of three two-family rental dwellings or duplexes for tax year 2010. The three duplexes are between 1,800 and 2,000 square feet in size and are located on platted lots in the City of Columbus (see property record cards).

The values of the properties as originally determined by the Franklin County Auditor, and as then reduced by the Franklin County Board of Revision, are the following:

| <u>Property</u> | <u>Auditor</u> | <u>Board of Revision</u> | <u>Parcel No.</u> |
|-------------------------|----------------|--------------------------|-------------------|
| 1093-95 Tulsa Drive | \$153,700 | \$96,000 | 010-142966 |
| 5075-77 Kingshill Drive | \$153,700 | \$97,500 | 010-132548 |
| 1601-603 Norma Road | \$149,200 | \$101,000 | 010-145969 |

The owner of the properties, Mr. Donald Beck, was the only witness to appear before the Board of Revision and he presented the Board with print-outs of six sales of duplexes taken from the Board of Realtors multiple listing service and/or the Auditor's website. Supp. 1-6. Mr. Beck testified that the six sales were given to him by a realtor, who also helped Mr. Beck determine a value for the three properties (BOR audio record). The sale prices of the six properties ranged between \$64,900 and \$95,000. Of the six sales, the print-outs stated that one of the sales "has fire damage" (5131 Kingsmill Drive); Supp 1; one of the properties was a direct "HUD" sale (4881 Songbird Drive); Supp 2; and one was "bank owned" (4927 Karl Road); Supp 3. The property with the highest sale price of the six was the two-family dwelling at 4950-952 Karl Road which sold on August 21, 2012 for \$95,000, more than 30 months after the tax lien date in question. The property with the second highest sale price was the duplex on Kingsmill Drive which had "fire damage" and

needed "TLC" and sold for \$90,000 in July, 2007, 29 months prior to the tax lien date in question. The third highest sale comparable was the direct HUD sale of the Songbird Drive property for \$80,000. The six print-outs said nothing else about the properties that had sold, and each print-out simply listed the sale price as "SP" followed by a figure. Mr. Beck acknowledged that he had no personal knowledge about the condition of any of the six sale properties or about the nature of any of the sales. Mr. Beck testified that "I haven't been inside any of these" and with regard to his knowledge of the interior condition of his comparable sales stated: "Looking at it from the outside, I have no idea. When you go inside, some of these things are torn to pieces so I really can't let you know about that." BOR audio record. The realtor who gave Mr. Beck the sale print-outs did not attend the Board of Revision hearing. Based on the print-outs given to him by the realtor, Mr. Beck claimed that the three properties had a value of \$81,066 (Tulsa Drive), \$81,066 (Kingshill Drive), and \$74,666 (Norma Road).

The BOR did not accept Mr. Beck's claimed values, and instead made up its own values for the three properties: \$96,000, \$97,500, and \$101,000 (as set out above). The BOR did not explain how it had adopted these values or set forth any of the appraisal facts upon which it based its values. In rendering its decision, the BOR made the following conclusory statement: "in each one of these cases, we did consider both the sale comparison approach and the income approaches to value and weighted them appropriately." BOR audio record. However, nowhere in the BOR notes or in the entire record can any sale comparison approach analysis or income approach analysis be found. This is because no such analysis was conducted. The only testimony dealing with the income capabilities of the subject parcels given at the BOR hearing was by Mr. Beck, who only discussed the current gross rents he receives. Absolutely no information was given regarding expenses or a capitalization

rate. No information was given by either Mr. Beck or the BOR regarding the actual *net income* comparability of any of the sale comparables provided.

The BOR provided no information as to how it actually arrived at its three values for the subject parcels. As a result, there is nothing in the record to support the BOR's valuation decisions. The County Auditor had reappraised the three properties for tax year 2011 sexennial reappraisal at values of \$128,600, \$136,200, and \$122,400, respectively. BTA Decision, fn. 1. The BOR did not utilize these values either.

Because there was no evidence in the record to support the values actually determined by the Board of Revision, the Board of Education appealed all three decisions to the BTA. The BTA heard the appeal on the record as permitted by R.C. 5717.01 and on April 10, 2014, the BTA affirmed the decisions of the Board of Revision. While the BTA stated that "it is clear that valuation determinations made by county board of revision are not presumptively correct," the BTA failed to set forth any rational reasoning for this conclusion and it is clear from the record that the BTA simply presumed that the BOR's values were correct and rubber stamped those values.

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

LAW AND ARGUMENT

Introduction

The issue in this appeal is whether there is sufficient competent *and probative* evidence in the record to allow the BTA to independently determine the true value of the three properties involved in the appeal. There is no such evidence. As such, the BTA was not permitted to simply adopt or affirm the decisions of the Franklin County Board of Revision, which had granted substantial

reductions in the value of the properties, because the BTA had no idea how the BOR had arrived at its value or what adjustments it made to the raw, unadjusted sale data that Mr. Beck presented.

The six print-outs of the pages from the multiple listing service and the Auditor's website of the raw unadjusted sales given to the BOR by Mr. Beck were not probative evidence of the true value of any of his three properties. No adjustments were made to the gross sale data by Mr. Beck and no evidence was presented from which any such adjustments could be made: that is, there is no evidence showing how the sale properties were comparable to, either similar or dissimilar, to the three subject properties. The Board of Revision clearly and properly rejected the property owner's evidence and the owner's opinions of the value of the three properties \$81,066 (Tulsa Drive), \$81,066 (Kingshill Drive), and \$74,666 (Norma Road).

Despite its claim to have "considered the sales comparison approach" to value, the BOR failed to include any such analysis in the record. Mr. Beck made no adjustments to the raw sales data presented and there is no evidence as to what if any adjustments the BOR may have made to the raw sales data. As such, there is no way that anyone can account for the BOR's values for the three properties of \$96,000, \$97,500, and \$101,000, respectively. It would appear from the record therefore, that the BOR values were simply plucked out of thin air. Consequently, there is no conceivable way that the BTA could have possibly evaluated these "adjustments" to find "that they are supported by the record" because there is no evidence in the record proving that any adjustments were ever made. Furthermore, there is no evidence that the BOR had any information regarding the actual condition of the proffered sale comparables in order to make justifiable adjustments.

There is simply no evidence in the record to support the BTA's two conclusions relating to the value of the properties. First, there is no evidence to show that the County Auditor's "initial assessments of the subject properties overstated their value." BTA Decision, p. 2. Second, there is no evidence in the record that allowed the BTA to "find that the adjustments effected by the BOR to be supported by the record." BTA Decision, p. 3. No one, including the BTA, has any idea what those "adjustments" were, why they were made, or if any actual "adjustments" were made. The BTA erred in affirming the decisions of the BOR and it should have reinstated the County Auditor's original values.

Proposition of Law No. 1:

If there is no evidence before the BTA from which it can independently determine the true value of the property, the BTA must adopt the county auditor's original appraised value of the property.

R.C. 5717.03 requires the BTA to "determine the taxable [or true] value of the property. Appx. 10. This statute requires the BTA to "determine" true value, not to summarily declare true value, and the BTA does not properly "determine" true value when it simply rubber stamps a value previously determined by a county board of revision without any support in the record for how the BOR reached its decision. Simply stated, the BTA failed to independently determine the true value of the subject properties.

In the appeal at hand, the Franklin County Board of Revision claimed to have "considered both the sales comparison approach and income approaches" to value, and remarkably, to have "weighted them appropriately" without including any of its alleged analysis in the record.

Sales Comparison Approach

Administrative Code Rule 5703-25-05(G), which is a rule of the Tax Commissioner adopted pursuant to R.C. 5715.01, sets forth the fundamental requirements of the market data or sales comparison approach to value. The Rule states that the market approach is a “process of correlation and analysis of similar recently sold properties” and that “[t]he reliability of this technique is dependent upon *** [t]he degree of comparability of each property with the property under appraisal.” The Rule reads as follows (Appx. 11).:

(G) ‘Market data approach’ - An appraisal technique in which the market value estimate is predicated upon prices paid in actual market transactions ***. 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;
- (4) The absence of unusual conditions affecting the sale.

The “process of correlation and analysis of similar recently sold properties” requires adjustments to be made to the gross sales data based on the “degree of comparability of each property to the property under appraisal.” While the BOR may have relied on Mr. Beck’s raw unadjusted sales data, it did not identify any adjustments that it made to the sale to arrive at a value for each of the three properties involved in this appeal. Two of the sales are more than 24 months from the tax lien date in question. See *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. One sale had “fire damage” and needed “TLC” and another was a forced HUD sale. See *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of*

Revision 127 Ohio St.3d 63, 2010-Ohio-4907. There is no indication that any of the six sales were verified by either Mr. Beck or the BOR. Quite frankly, it was not possible for the BTA to review the values determined by the BOR in this case without knowing what adjustments the BOR made to the sales data based on the BOR's determination of "[t]he degree of comparability of each property with the property under appraisal." It is, likewise, not possible for the BTA to independently determine the true value of the three properties in the present appeal without evidence of the "[t]he degree of comparability of each property with the property under appraisal" and without evidence showing what adjustments have to be made to the sales data to account for the differences in the properties in question.

Income Approach

Administrative Code Rule 5703-25-05(F) sets forth the fundamental requirements of the income approach to value. The Rule (Appx. 11) states that the income approach is "an appraisal technique in which the anticipated *net income* is processed to indicate the capital amount of the investment which produces the *net income*" and that "[t]he 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). (emphasis added).

The only information presented by Mr. Beck to the BOR regarding the income for the subject properties was the reported *gross monthly rental rates*. BOR Audio. No expense information (actual or market) was provided and capitalization rates were not even discussed. Not a single item of actual *market* income or expense data was provided by either Mr. Beck or the BOR.

Consequently, it was literally impossible for the BTA to evaluate the BOR's claimed income approach to value because it simply does not exist.

The rules that governed the BTA's decision in this appeal are clear. When a county board of revision reduces the true value of real property and the BTA hears the appeal on the record from the board of revision, the BTA must:

(1) Independently review the record and determine whether there is sufficient competent *and probative* evidence in the record to allow it to "determine the [true] value of the property." If the evidence shows that the board of revision *correctly determined* the true value of the property based on the evidence before it, then the BTA can adopt or affirm the board's value. If the evidence shows that the board of revision *incorrectly determined* the true value of the property based on the evidence before it and there is competent *and probative* evidence in the record to allow the BTA to determine value, then the BTA must make its own independent determination of value; or

(2) If the evidence contained in the record is not sufficient to allow the BTA to determine the true value of the property, then a change in the value as determined by the board of revision cannot be supported by the record and it cannot be affirmed. In this instance, the BTA must reinstate the county auditor's original appraised value of the property unless the property owner has *affirmatively negated* the Auditor's original valuation by demonstrating an error contained therein. See *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, 915 N.E.2d 1196 and This Court has held the even if there is "some evidence tending to negate the auditor's original values that the BTA can reinstate the Auditor's value. *Vandalia-Butler City Schols Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d, 2011-Ohio-5078, 958 N.E.2d 131.

The BTA could not determine the true value of the three properties involved in this appeal on its own because there was not sufficient competent *and probative* evidence in the record to allow that to be done. Therefore, the BTA was required reject the BOR's decision to reduce the subject parcel's values and to reinstate the County Auditor's original appraised values. The facts of the present appeal are essentially the same as those found in *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078, 958 N.E.2d 131, and the headnotes to sections I and II of this Court's decision govern resolution of this appeal: "I. The BTA erred by deferring to the BOR's determination rather than relying on its independent evaluation of the evidence" and "II. Case law requires the BTA to determine whether the record contains sufficient [competent *and probative*] evidence to allow an independent valuation" [beginning of ¶ 13 and ¶ 20]. (bracketed language added). The Court made it clear that when the board of revision granted a reduction in the true value of the property and the BTA hears the appeal on the record, the BTA can affirm or adopt the board of revision's value "if and only if the BTA independently concluded that the evidence supports *the very value found by the BOR*" ¶ 21. In the appeal at hand, there is no evidence to show how the BOR arrived at its three values of \$96,000, \$97,500, and \$101,000. Consequently, there is no evidence in the record to support those values and they cannot be affirmed.

In *Vandalia-Butler City Schools*, the property owner presented the board of revision with an appraisal from an appraiser who did not attend the board of revision hearing and with some vague information relating to the income and expenses of the hotel property and some other information. ¶ 4. The board of revision then granted a substantial reduction in the true value of the property "per CLT review & recommendation" (CLT was the county auditor's appraisal firm). The appraisal firm made handwritten notes on the property-record card which supposedly reflected adjustments to the

original income approach data used by the Auditor to value the property, but “[t]here are no such handwritten notations on the separate page that reflects the ultimate determination of value according to the income approach” ¶ 7. On appeal, the BTA affirmed the values determined by the board of revision. This Court reversed the BTA holding that “[i]n sum, the BTA erred by deferring to the BOR’s decision to order the value reduction, rather than relying on its own independent evaluation of the evidence as required by case law.” ¶ 19.

In *Vandalia-Butler City Schools*, supra, this Court repeated what it described as the well established proposition that “decisions of boards of revision should not be accorded a presumption of validity.” ¶ 13. This Court then stated that “the BTA’s duty was to ‘determine whether the record as developed by the parties contain[s] sufficient evidence to permit an independent valuation of the property.’” ¶ 26; quoting from *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 114 Ohio St.3d 493, 2007-Ohio-4641, 873 N.E.2d 298, ¶ 25]. Furthermore, the BTA could affirm a value determined by the board of revision “if and only if the BTA independently concluded that the evidence [competent *and probative*] supports the very value found by the BOR.” According to this Court:

It is true that the absence of sufficient evidence requires the BTA to reverse a reduction or increase ordered by a board of revision. But it does not follow that the presence of a particular quantum of evidence requires the BTA to adopt the BOR’s valuation. *** Put differently, the evidence for adopting the BOR’s valuation could be ‘sufficient’ for purposes of the BTA’s review if and only if the BTA independently concluded that the evidence supports the very value found by the BOR. Here the language of the BTA’s decision makes clear that the BTA reached no such independent conclusion. ¶ 21.

This Court emphasized that the BTA was required to reinstate the county auditor’s original value – it could not adopt or affirm the lower value determined by the board of revision - if “the

owner has not *proved* a lower value” than that originally determined by the county auditor “and there is otherwise ‘no evidence from which the BTA can independently determine value.’”

*** Even if some evidence tends to negate the auditor’s original valuation, it is proper to revert to that valuation when the BTA finds that the owner has not proved a lower value *and there is otherwise ‘no evidence from which the BTA can independently determine value.’* [original emphasis] *Simmons v. Cuyahoga Cty. Bd. of Revision* (1998), 81 Ohio St.3d 47, 49, 1998 Ohio 443, 689 N.E.2d 22. *Vandalia* ¶ 24.

The BTA cannot affirm a value reduction granted by a board of revision “[i]n the absence of *probative evidence* supporting the reduction in value ordered by the board of revision” and in such a case, “the county auditor’s original valuation should be reinstated.” *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 106 Ohio St. 3d 157, 159; 2005-Ohio-4385; 833 N.E.2d 271, 273 ¶ 12. (emphasis added).

It is now well settled that the county auditor’s original appraised value of real property is the default valuation that stands when the evidence contained in the record is not sufficient to prove a different value or where the property owner has failed to demonstrate a specific error in the auditor’s original value calculations. In *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 277; 2009-Ohio-4975; 915 N.E.2d 1196, this Court stated that “[t]he county’s appraised value thus forms in most cases a default valuation that must be preferred and adopted if the appellant before the BTA fails to prove a different value of the property” ¶ 31. In *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 492; 2010-Ohio-1921; 929 N.E.2d 426; ¶ 31, this Court referred to the county auditor’s original valuation of real property as a “presumptively correct valuation” citing *Colonial Village, Ltd.*, *supra*.

There was no evidence in the record from which the BTA could determine the true value of the three properties involved in this appeal and the BTA in fact failed to actually determine value instead deciding to rubber stamp the BOR's decision despite rejecting all of Mr. Beck's evidence. None of evidence presented by Mr. Beck to the BOR was competent and probative evidence of the true value of the property. None of the raw unadjusted sales data Mr. Beck produced is relevant in determining the true value of his properties and there is no evidence showing what adjustments the BOR made to the raw unadjusted sales data to produce its three values. Consequently, the BTA could not reasonably conclude that the "adjustments effected by the BOR" were "supported by the record" (BTA Decision, p. 3) because the BTA did not know what those adjustments were or how the BOR determined its values for the three properties.

Proposition of Law No. 2:

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 essentially decided the appeal before it with one conclusory sentence in which it stated that "we find the adjustments effected by the BOR to be supported by the record." As is now typical with the BTA with and its use of its standardized template form decision, the BTA refuses to identify a single fact in its decision that would provide support of any kind for its conclusions. This Court has held numerous times that it is impossible for it to review a BTA decision as required by R.C. 5717.04 when the BTA fails to set forth the facts upon which its decision is based.

This Court has also 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*, 37 Ohio St.3d 195, 197; 524 N.E.2d 887 (1988), 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 upon which it relies to justify its valuation of real property for tax purposes are set in *HealthSouth Corp. v. Levin*, 121 Ohio St.3d 282, 2009-Ohio-584, 903 N.E.2d 1179, ¶ 34, 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;” *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 it has found that a value determined by a county board of revision “is supported by the record” when the BTA fails to set forth a single fact upon which that finding is based. 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.” In the present appeal, the BTA did not “analyze” the evidence in the record let alone set forth its reasons for accepting or rejecting it.

The requirement to state the “facts” based on an analysis of the evidence means that the BTA must provide this Court with a “detailed explanation” of the specific appraisal data or market data upon which it relies to justify its determination 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*, 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. (emphasis added).

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 that the BTA must “spell out the steps it took to arrive at the true value of GM’s real property for the years in question” and “what amounts or percentages it used for its computation of true value, and the evidence of record supporting them” and “why it made the particular selections in preference to some other approach” and then this Court concluded that “[o]nly 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 adjustments effected by the BOR to be supported by the record" 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. 3:

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

It is well-settled that a property owner must present "competent *and probative* evidence" to "prove" or "establish" the true value of the property in order to obtain a lawful reduction in value from a board of revision. Probative evidence in this sense consists of the appraisal-related facts (market data) that prove the true value of the property. All of the quotations from the following cases emphasize the requirement that the property owner must "prove" the true value of the property. In *Sapina v. Cuyahoga County Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, 992 N.E.2d 1117, ¶ 26, this Court stated the following: "The 'first rule' in an appeal from the board of revision is that 'the party challenging the board of revision's decision at the BTA has the burden of proof to establish its proposed value as the value of the property,'"¹ citing from *Colonial Village Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975; 915 N.E.2d 1196, citing *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948, 865 N.E.2d 22. The requirement to present the BTA with "probative" evidence means

¹ An appellant before the BTA "can meet its burden of proof before the BTA by showing through cross-examination . . . that the board of revision erred when it reduced the value from the amount first determined by the auditor." See *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 106 Ohio St.3d 157, 2005-Ohio-4385, 833 N.E.2d 271.

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 property owner before the BTA must “prove a right to a reduction in value.” *Westlake Med. Investors, L.P. v. Cuyahoga Cty. Bd. of Revision*, 74 Ohio St.3d 547, 549, 660 N.E.2d 467 (1996). “The taxpayers had the obligation to prove their right to a reduction in value.” *Mentor Exempted Village Bd. of Edn. v. Lake County Bd. of Revision*, 37 Ohio St.3d 318, 319; 526 N.E.2d 64 (1988). The property owner must “prove its right to an increase or decrease from the value determined by the board of revision” *Board of Educ. of the Columbus City Sch. Dist. v. Franklin County Bd. of Revision*, 90 Ohio St.3d 564, 566; 740 N.E.2d 276 (2001). “[T]he appellant must come forward and demonstrate that the value it advocates is a correct value.” *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision*, 68 Ohio St.3d 493, 628 N.E.2d 1365 (1994).

Had the BTA performed its duty to independently examine the evidence in the record and to evaluate the probative nature of that evidence it should have concluded that none of the evidence constituted probative evidence of the true value of the three properties involved in the appeal. Mr. Beck’s opinions of the value of the three properties were based at least in part on the six unadjusted comparable sales obtained by a realtor and on the opinions of the realtor, who did not attend the BOR hearing. Mr. Beck had no knowledge of the six sales; for instance, whether they were arm’s-length sales or about condition of the sale properties. Mr. Beck agreed that his three properties were in better condition than the six sale properties. (BOR audio record). Two of the five sales could not be used to value Mr. Beck’s properties because one had “fire damage” and another was a HUD sale. The other four sales do not appear to provide any relevant information about the value of Mr. Beck’s properties. Finally, the BOR failed to identify any of the adjustments it made to this raw sales data

(assuming any adjustments were actually made) to determine the true value of Mr. Beck's properties, and it was not possible for the BTA to make any adjustments itself because there was no evidence showing how any of the sales compared to any of Mr. Beck's properties. Had the BTA identified the relevant facts before it instead of deferring to and then rubber stamping the BOR's decision, it would have had to conclude that the evidence in the record did not support the BOR's reductions in the value of the three properties and would have reinstated the Auditor's original values because Mr. Beck failed to "affirmatively negate" the Auditor's original value..

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 the three properties involved in this appeal, 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.

Respectfully Submitted,



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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 Donald Beck, 1782 Ferris Road, Columbus, Ohio, 43224, and on William J. Stehle, Assistant County Prosecutor, 373 South High Street, 20th 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 12th day of September, 2014.



Mark 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 Donald W.
Beck

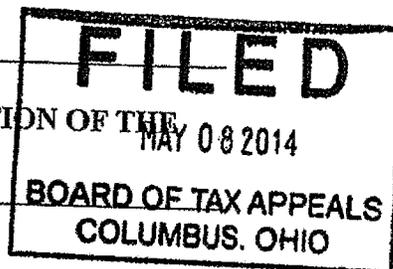
Appellees.

Case No.

14-0721

Appeal from the Ohio Board of
Tax Appeals - Case No. 2013-4176
2013-4177, and 2013-4178

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



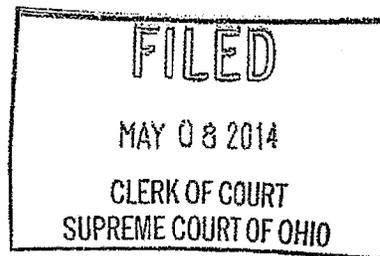
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IN THE SUPREME COURT OF OHIO

Board of Education of the Columbus
City Schools, :

Appellant, :

v. :

Franklin County Board of Revision,
Franklin County Auditor, and Donald W.
Beck :

Appellees. :

Case No. _____

Appeal from the Ohio Board of
Tax Appeals - Case No. 2013-4176
2013-4177, and 2013-4178

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 Donald W. Beck*, BTA Case Nos. 2013-4176, 2013-4177, and 2013-4178, 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,



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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 affirming the Board of Revision's decision to reduce the value of the subject parcels based upon the presentation of unverified raw sales data by the property owner in direct contradiction to its own prior decisions.
- (2) The BTA erred in giving the Board of Revisions' decision unlawful deference in direct contradiction to this Court's ruling in *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078.
- (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 failing to conduct a de novo review of the record in this matter.
- (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 Appellee Beck.
- (8) The BTA erred by holding that "the property owner demonstrated that the initial assessments of the subject properties overstated their value."
- (9) 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.

Donald W. Beck
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Ron O'Brien
Franklin County Prosecutor
William J. Stehle, Esq.
Assistant County Prosecutor
373 South High St., 20th Floor
Columbus, Ohio 43215



Mark 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 Donald W.
Beck

Appellees.

Case No. _____

Appeal from the Ohio Board of
Tax Appeals - Case No. 2013-4176
2013-4177, and 2013-4178

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 Donald W. Beck.*, BTA Case Nos. 2013-4176, 2013-4177, and 2013-4178, rendered on April 10, 2014, to the Supreme Court of Ohio within 30 days of service hereof as set forth in R.C. 517.04.

Respectfully submitted,



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

Attorneys for Appellant Board of Education

OHIO BOARD OF TAX APPEALS

| | | |
|--|---|----------------------------------|
| Board of Education of the Columbus City Schools, |) | CASE NOS. 2013-4176 to 2013-4178 |
| |) | |
| Appellant, |) | (REAL PROPERTY TAX) |
| |) | |
| vs. |) | DECISION AND ORDER |
| |) | |
| Franklin County Board of Revision, et al., |) | |
| |) | |
| Appellees. |) | |

APPEARANCES:

- For the Appellant - Rich & Gillis Law Group, LLC
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- For the County Appellees - Ron O'Brien
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William J. Stehle
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Columbus, OH 43215

- For the Appellee Property Owner - Donald W. Beck
1782 Ferris Road
Columbus, Ohio 43224

Entered APR 10 2014

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

Appellant appeals decisions of the board of revision ("BOR") which determined the value of the subject real properties, parcel numbers 010-142966-00, 010-132548-00, and 010-145969-00. This matter is now considered upon the notices of appeal and the transcripts certified by the BOR pursuant to R.C. 5717.01. The subjects' total true values were initially assessed at \$153,700, \$153,700, and \$149,200, respectively, for tax year 2010.¹ Decrease complaints were filed with the BOR seeking reductions in value to \$81,066, \$81,066, and \$74,666, respectively. Appellant filed countercomplaints in support of maintaining the auditor's values. The BOR issued decisions reducing the true values of the properties to \$96,000, \$97,500, and \$101,000, respectively, which led to the present appeals.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but

¹ The auditor assessed the subject properties at \$128,600, \$136,200, and \$122,400, respectively, for tax years 2011 and 2012, which are also at issue in this appeal.

not compelled to do so and () who is willing to buy but not com() to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary.”² *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. In this instance, there exists no evidence the subject property “recently” transferred through a qualifying sale, nor did appellant provide a competent appraisal of the subject property, attested to by a qualified expert, for the tax lien date in issue.

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 and 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.

In the present cases, we conclude the property owner demonstrated that the initial assessments of the subject properties overstated their value. The BOR, established to initially review valuation challenges at the local level, took into consideration the taxpayer’s evidence, as well as the information available to it, and concluded that an adjustment to value was warranted. On appeal, the BOE presented no evidence of

² Justice Pfeifer’s concurrence in *LTC Properties, Inc. v. Licking Cty. Bd. of Revision*, 133 Ohio St.3d 111, 2012-Ohio-3930, echoes the court’s prior observations: “All property owners and their counsel know that they have a heavy burden to overcome when challenging a valuation. *** [I]f a[n appellant] wants to challenge a valuation, it should send a certified appraiser or other qualified expert, not an employee, however experienced. It is well known that the only nonexperts competent to testify as to valuation are owners. Finally, the best way to challenge a valuation is with a proper appraisal, which was not submitted in this case.” *Id.* at ¶28. The court has also held that “[w]hile an owner may testify as to the value of his or her property, there is no requirement that the finder of fact accept that value as the true value of the property.” *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision* (1996), 76 Ohio St.3d 29, 32. Rather, this board is charged with the responsibility of determining value based upon evidence properly contained within the record which must be found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1997), 77 Ohio St.3d 402, 405; *Cardinal Fed. S. & L. Assn. v. Bd. of Revision* (1975), 44 Ohio St.2d 13, paragraph two of the syllabus.

value, relying instead solely upon its legal arguments that the BOR's decisions are unsupported. While such an approach is permissible, courts have recognized that the election to proceed in such a manner is not without risk since the reviewing body may concur that the record is sufficient to support the board of revision's valuation. See, e.g., *Dublin City Schools Bd. of Edn.*, supra; *Westhaven, Inc. v. Wood Cty. Bd. of Revision* (1998), 81 Ohio St.3d 67; *Fairlawn Assoc. Ltd. v. Summit Cty. Bd. of Revision*, Summit App. No. 22238, 2005-Ohio-1951. In this instance, we find insufficient the arguments advocating for reinstatement of the originally assessed values since we agree the record does not support such amounts. Instead, we find the adjustments effected by the BOR to be supported by the record. It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2010, January 1, 2011, and January 1, 2012, were as follows:

| PARCEL NO. | TRUE VALUE | TAXABLE VALUE |
|---------------|------------|---------------|
| 010-142966-00 | \$ 96,000 | \$33,600 |
| 010-132548-00 | \$ 97,500 | \$34,130 |
| 010-145969-00 | \$101,000 | \$35,350 |

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

5717.03 Decision of board of tax appeals - certification - effect.

(A) A decision of the board of tax appeals on an appeal filed with it pursuant to section 5717.01 , 5717.011 , or 5717.02 of the Revised Code shall be entered of record on the journal together with the date when the order is filed with the secretary for journalization.

(B) In case of an appeal from a decision of a county board of revision, the board of tax appeals shall determine the taxable value of the property whose valuation or assessment by the county board of revision is complained of, or in the event the complaint and appeal is against a discriminatory valuation, shall determine a valuation which shall correct such discrimination, and shall determine the liability of the property for taxation, if that question is in issue, and the board of tax appeals' decision and the date when it was filed with the secretary for journalization shall be sent by the board to all persons who were parties to the appeal before the board, to the person in whose name the property is listed, or sought to be listed, if such person is not a party to the appeal, to the county auditor of the county in which the property involved in the appeal is located, and to the tax commissioner.

In correcting a discriminatory valuation, the board of tax appeals shall increase or decrease the value of the property whose valuation or assessment by the county board of revision is complained of by a per cent or amount which will cause such property to be listed and valued for taxation by an equal and uniform rule.

(C) In the case of an appeal from a review, redetermination, or correction of a tax assessment, valuation, determination, finding, computation, or order of the tax commissioner, the order of the board of tax appeals and the date of the entry thereof upon its journal shall be sent by the board to all persons who were parties to the appeal before the board, the person in whose name the property is listed or sought to be listed, if the decision determines the valuation or liability of property for taxation and if such person is not a party to the appeal, the taxpayer or other person to whom notice of the tax assessment, valuation, determination, finding, computation, or order, or correction or redetermination thereof, by the tax commissioner was by law required to be given, the director of budget and management, if the revenues affected by such decision would accrue primarily to the state treasury, and the county auditors of the counties to the undivided general tax funds of which the revenues affected by such decision would primarily accrue.

(D) In the case of an appeal from a municipal board of appeal created under section 718.11 of the Revised Code, the order of the board of tax appeals and the date of the entry thereof upon the board's journal shall be sent by the board to all persons who were parties to the appeal before the board.

(E) In the case of all other appeals or applications filed with and determined by the board, the board's order and the date when the order was filed by the secretary for journalization shall be sent by the board to the person who is a party to such appeal or application, to such persons as the law requires, and to such other persons as the board deems proper.

(F) The orders of the board may affirm, reverse, vacate, modify, or remand the tax assessments, valuations, determinations, findings, computations, or orders complained of in the appeals determined by the board, and the board's decision shall become final and conclusive for the current year unless reversed, vacated, or modified as provided in section 5717.04 of the Revised Code. When an order of the board becomes final the tax commissioner and all officers to whom such decision has been sent shall make the changes in their tax lists or other records which the decision requires.

(G) If the board finds that issues not raised on the appeal are important to a determination of a controversy, the board may remand the cause for an administrative determination and the issuance of a new tax assessment, valuation, determination, finding, computation, or order, unless the parties stipulate to the determination of such other issues without remand. An order remanding the cause is a final order. If the order relates to any issue other than a municipal income tax matter appealed under sections 718.11 and 5717.011 of the Revised Code, the order may be appealed to the court of appeals in Franklin county. If the order relates to a municipal income tax matter

(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.