

IN THE SUPREME COURT OF OHIO

15-0323

STEAK N SHAKE, INC. NKA STEAK N SHAKE OPERATIONS, INC., )

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

Appellant, )

Appeal from the Ohio Board of Tax Appeals

-vs- )

Board of Tax Appeals Case No. 2013-6104

WARREN COUNTY BOARD OF REVISION, WARREN COUNTY AUDITOR, MASON SCHOOL DISTRICT BOARD OF EDUCATION AND TAX COMMISSIONER OF OHIO, )

Appellees. )

NOTICE OF APPEAL OF STEAK N SHAKE, INC. NKA STEAK N SHAKE OPERATIONS, INC.

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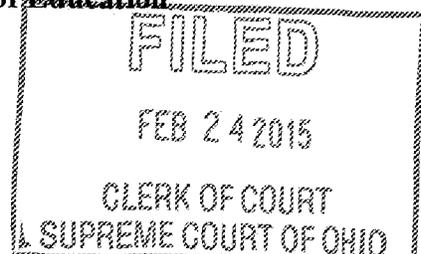
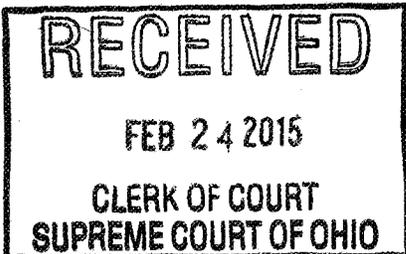
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Attorneys for Appellees Mason City School District Board of Education

Tax Commissioner of Ohio



## NOTICE OF APPEAL OF APPELLANT

Appellant Steak N Shake, Inc. nka Steak N Shake Operations, Inc. hereby gives notice of its appeal as of right under R.C. § 5717.04 to the Supreme Court of Ohio from a Decision and Order of the Board of Tax Appeals journalized in Case No. 2013-6104 on January 28, 2015. A true copy of the Decision and Order of the Board being appealed is attached hereto as Exhibit A and incorporated herein by reference. Appellant hereby complains of the following errors in the Decision and Order of the Board of Tax Appeals:

1. The Board of Tax Appeals' decision is unreasonable and unlawful since it failed to determine the value for tax year 2012 independently of its decision of the subject property's value for the tax year 2009.
2. The decision of the BTA is unreasonable and unlawful since it failed to independently review the new evidence presented at the Board of Tax Appeals merit hearing for tax year 2012.
3. The Board of Tax Appeals' decision is unreasonable and unlawful since it relied on the 2012 Rinck appraisal, which was essentially the same as the 2009 Rinck appraisal report, wherein Rinck failed to properly adjust the 2009 report data in the income and sales comparison approaches to the January 1, 2012 tax lien date.
4. The Board of Tax Appeals erred in determining that Edward C. Rinck is an expert since he is not a licensed appraiser, not certified as an appraiser in the State of Ohio or any other state, and has not taken any continuing appraisal education courses.
5. The Board of Tax Appeals' decision is unreasonable and unlawful since it failed to utilize the appraisal report and testimony of W. Shaun Wilkins, MAI, who is a licensed appraiser in the States of Ohio and Kentucky.
6. The Board of Tax Appeals' decision is unreasonable, unlawful, and/or an abuse of discretion since it found the written opinion of value and testimony by Edward C. Rinck to be more competent, more credible, and/or more persuasive the appraisal report and testimony of W. Shaun Wilkins, MAI.

7. The Board of Tax Appeals' decision is unreasonable, unlawful, and/or an abuse of discretion since it found Edward C. Rinck's opinion evidence to be competent, credible and/or persuasive since it was not supported by his written opinion of value.
8. The Board of Tax Appeals' decision is unreasonable, unlawful, and/or an abuse of discretion since it determined a value based on Mr. Rinck's "going concern" data in contravention of Ohio law.
9. The Board of Tax Appeals erred in relying on the Rinck report since it fails to meet USPAP requirements and proper appraisal theory and practice.
10. The Board of Tax Appeals' decision is unreasonable, unlawful, and/or an abuse of discretion since the BTA's findings of fact are not supported by competent and probative evidence by a licensed or state certified appraiser.
11. The Board of Tax Appeals erred in determining that the Appellant failed to present competent and probative evidence of value. As a result, the Board of Tax Appeals' decision is unreasonable and unlawful.
12. The Board of Tax Appeals' findings of fact and conclusions of law are against the manifest weight of the evidence and, as a result, is unreasonable and unlawful.
13. The Board of Tax Appeals' decision violates the Property Owner's right to due process under the Ohio and U.S. Constitution and, as a result, is unreasonable and unlawful.
14. The Board of Tax Appeals' decision results in an unlawful taking of property under the Ohio and U.S. Constitution and, as a result, is unreasonable and unlawful.
15. The Board of Tax Appeals' decision violates the Property Owner's right to equal protection under the law and, as a result, is unreasonable and unlawful.

Appellant requests that the Court vacate the Board of Tax Appeals' decision and order the Board of Tax Appeals to determine the true value of the subject property to be \$694,000 as of January 1, 2012 to be carried forward according to law.

Respectfully submitted,



Karen H. Bauernschmidt #0006774 (Counsel of Record)

Stephen M. Nowak #0078349

**Attorneys for Appellant**

OHIO BOARD OF TAX APPEALS

STEAK N SHAKE, INC. NKA STEAK N SHAKE  
OPERATIONS, INC., (et. al.),

CASE NO(S). 2013-6104

Appellant(s),

(REAL PROPERTY TAX)

vs.

DECISION AND ORDER

WARREN COUNTY BOARD OF REVISION, (et.  
al.),

Appellee(s).

APPEARANCES:

For the Appellant(s) - STEAK N SHAKE, INC. NKA STEAK N SHAKE OPERATIONS, INC.  
Represented by:  
KAREN H. BAUERNSCHMIDT  
KAREN H. BAUERNSCHMIDT CO., LPA  
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For the Appellee(s) - WARREN COUNTY BOARD OF REVISION  
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WARREN COUNTY  
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LEBANON, OH 45036

MASON CITY SCHOOL DISTRICT BOARD OF EDUCATION  
Represented by:  
DAVID C. DIMUZIO  
DAVID C. DIMUZIO, INC.  
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CINCINNATI, OH 45202

Entered Wednesday, January 28, 2015

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

Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 16 32 475 0060, for tax year 2012. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of this board's hearing.

The subject's total true value was initially assessed at \$965,560. A decrease complaint was filed with the BOR seeking a reduction in value to \$800,000. The appellee board of education filed a countercomplaint in support of maintaining the auditor's values. At tax lien date, the subject property operated as a Steak N Shake restaurant. At the BOR hearing, appellant relied upon the testimony of

EXA

Steak N Shake's district manager and a copy of an appraisal report prepared for a tax year 2009 valuation challenge. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. Prior to the hearing before this board, the county appellees moved for this board to amend the case management schedule. At this time we deny the motion as moot. At this board's hearing, appellant relied on the testimony and written report of appraiser Shaun Wilkins, who opined the subject's true value was \$694,000 as of the tax lien date. The county appellees submitted the testimony and written report of appraiser Edward Rinck, who opined a true value of \$970,000 as of the tax lien date.

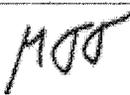
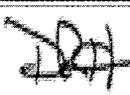
When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. \*\*\* However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. Such is the case in this matter, as the record does not indicate that the subject property "recently" transferred through a qualifying sale.

Upon review of the parties' appraisal evidence, we note that both appraisals provide an opinion of value as of tax lien date, were prepared for tax valuation purposes, and were attested to by a qualified expert. As previously mentioned, appellant challenged the tax year 2009 values, and that matter is currently on appeal at the Supreme Court. On April 15, 2014, this board issued its decision on the tax year 2009 matter, in which we considered appraisals by Mr. Wilkins and Mr. Rinck, both of which opined values as of the relevant tax lien date utilizing substantially similar approaches as they did in the instant appeal. Upon reviewing both appraisals and considering the methodologies considered and conclusions reached, this board determined that Mr. Rinck's conclusion of value was more persuasive. Relying on his determination, this board found value consistent with his report. See *Steak N Shake, Inc. nka Steak N Shake Operations, Inc. v Warren Cty. Bd. of Revision* (Apr. 15, 2014), BTA. No. 2010-3527, unreported, appeal pending Sup. Ct. No. 2014-0744. For the reasons set forth in our earlier decision, we likewise find Mr. Rinck's determination to be competent and probative, the value conclusion reasonable and well-supported, and his analysis more persuasive.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2012, were as follows:

TRUE VALUE  
\$970,000  
TAXABLE VALUE  
\$339,500

**BOARD OF TAX APPEALS**

RESULT OF VOTE	YES	NO
Mr. Williamson		
Mr. Johrendt		
Mr. Harbarger		

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.



Kathleen M. Crowley, Board Secretary

## PROOF OF SERVICE

I hereby certify that a copy of this Notice of Appeal was sent this 23<sup>rd</sup> day of February, 2015  
by certified mail, return receipt requested to:

Christopher A. Watkins  
Assistant Warren County Prosecutor  
500 Justice Drive  
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**Attorney for Appellees**  
**Warren County Board of Revision and Warren County Auditor**

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Stephen M. Nowak #0078349

**Attorneys for Appellant**