

NOTICE OF APPEAL FROM THE BOARD OF TAX APPEALS  
IN THE SUPREME COURT OF OHIO

Brooklyn City School District Board :  
Of Education :

Appellant, :

vs. :

Cuyahoga Board of Revision, :  
Cuyahoga County Fiscal Officer, and: :  
Biddulph Ridge Extension LLC, :

Appellees. :

Case No. 15-1354

Appeal from the Ohio Board  
of Tax Appeals

Board of Tax Appeals  
Case Nos. 2014-697/1031

**NOTICE OF APPEAL OF APPELLANT, BROOKLYN CITY SCHOOL  
DISTRICT BOARD OF EDUCATION**

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**FILED**  
AUG 17 2015  
CLERK OF COURT  
SUPREME COURT OF OHIO

RECEIVED  
Counsel for Appellee,  
Biddulph Ridge Extension LLC

AUG 17 2015

CLERK OF COURT  
SUPREME COURT OF OHIO

NOTICE OF APPEAL OF BROOKLYN CITY SCHOOL DISTRICT  
BOARD OF EDUCATION

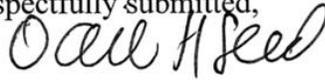
Appellant, Brooklyn City School District Board of Education, hereby gives notice of its appeal as of right, pursuant to R.C. 5717.04, to the Supreme Court of Ohio, from a Decision and Order of the Board of Tax Appeals, in Case Numbers 2014-697/1031, entered on July 16, 2015. A true copy of the Decision and Order of the Board being appealed is attached hereto and incorporated herein by reference.

The appellant 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 for finding that the sale comparables considered by Mr. Caldwell are more similar to the subject property than those utilized by Mr. Provencher.
2. The Board of Tax Appeals' Decision is unreasonable and unlawful since the findings of fact and conclusions of law are against the manifest weight of the evidence.
3. The Board of Tax Appeals' Decision is unreasonable and unlawful for finding that the income analysis initially performed by Mr. Caldwell and included in his report better reflects the actual experience of the subject property due to its location and market than Mr. Provencher's analysis.
4. The Board of Tax Appeals' Decision is unreasonable and unlawful for failing to account for Mr. Caldwell's acknowledgement of the appraisal of the leased fee interest which would exclude the Giant Eagle building in the income approach.
5. The Board of Tax Appeals' Decision is unreasonable and unlawful for adopting Mr. Caldwell's valuation of the leased fee interest as opposed to Mr. Provencher's valuation of the fee simple interest.

6. The Board of Tax Appeals' Decision is unreasonable and unlawful because it is arbitrary, an abuse of discretion, and lacks foundation in law and fact.

Respectfully submitted,



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Robert A. Brindza (0042549)  
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David A. Rose (0073201)  
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Counsel for Appellant, Brooklyn City School  
District Board of Education

### CERTIFICATE OF SERVICE

I certify that on this 14 day of August, 2015, a copy of this Notice of Appeal was sent by overnight mail to the Board of Tax Appeals while a copy of the Notice of Appeal was sent certified mail to Donald H. Powers, Esq., Donald H. Powers Co, LPA, 2 Berea Commons, Suite 211, P.O. Box 1059, Berea, Ohio, 44017-1059, and to Sandra Curtis-Patrick Esq., Cuyahoga County Prosecutor's Office, Courts Tower-Eighth Floor, 1200 Ontario Street, Cleveland, Ohio 44113.



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David H. Seed (0066033)  
Counsel of Record

**OHIO BOARD OF TAX APPEALS**

BROOKLYN CITY SCHOOL DISTRICT  
BOARD OF EDUCATION, (et. al.),

CASE NO(S). 2014-697, 2014-1031

Appellant(s),

(REAL PROPERTY TAX)

vs.

DECISION AND ORDER

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

Appellee(s).

**APPEARANCES:**

For the Appellant(s) - BROOKLYN CITY SCHOOL DISTRICT BOARD OF EDUCATION  
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION  
Represented by:  
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CUYAHOGA COUNTY  
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BIDDULPH RIDGE EXTENSION LLC  
Represented by:  
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POWERS & POWERS  
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BEREA, OH 44017

Entered Thursday, July 16, 2015

Mr. Williamson, Ms. Clements, and Mr. Harbarger concur.

The board of education ("BOE") and property owner appeal a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 432-28-001, for tax year 2012. These matters are now considered upon the notices of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of this board's hearing, and the parties' written arguments.

The subject property is a strip shopping center anchored by a freestanding Giant Eagle grocery store, which is subject to a ground lease. The subject's total true value was initially assessed at \$9,874,200. A decrease complaint was filed with the BOR seeking a reduction in value to \$8,000,000. The BOE

filed a countercomplaint in support of maintaining the auditor's values. At the BOR hearing, the property owner, Biddulph Ridge Extension LLC ("Biddulph Ridge") presented the testimony of member Mark Heller, along with the testimony and written report of appraiser James Caldwell, MAI. Mr. Heller testified regarding the history of the subject property's occupancy, including the series of events that resulted in the ground lease to Giant Eagle. Mr. Caldwell performed an appraisal of the subject property, and opined a total true value of \$8,000,000 as of January 1, 2012 based on the sales comparison and income approaches to value. The BOR issued a decision reducing the initially assessed valuation to \$8,600,000, which led to the present appeals.

On appeal, the BOE presented the testimony and written report of appraiser Paul D. Provencher, a state certified general appraiser, who opined a total true value of \$11,300,000 as of January 1, 2012 after performing the sales comparison and income approaches to value. In his income approach, Mr. Provencher considered the potential income from the Giant Eagle at a separate rate from the inline spaces of the strip center. Biddulph Ridge again presented the testimony of Mr. Caldwell and Mr. Heller. Mr. Caldwell indicated that he performed an income analysis that, in addition to the rental income for the strip center, considered the actual rents from the ground lease for the Giant Eagle rather than the estimated market rents for the land and building. Biddulph Ridge argued that this was the most appropriate analysis because, according to Mr. Heller, a buyer would only take the ground lease into consideration.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, 566. See, also, *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. In *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6, the court elaborated: "In order to meet that burden, the appellant must come forward and demonstrate that the value it advocates is a correct value. Once competent and probative evidence of value is presented by the appellant, the appellee who opposes that valuation has the opportunity to challenge it through cross-examination or by evidence of another value. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, \*\*\*. The appellee also has a choice to do nothing. However, the appellant is not entitled to the valuation claimed merely because no evidence is adduced opposing that claim. *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340, 342, \*\*\*." *Id.* at ¶¶5-6. (Parallel citations omitted.)

Although the "best evidence" of a property's value for tax purposes is considered the price at which it transfers between unrelated parties near the tax lien date, the Supreme Court has pointed out that "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, 412. This view has been reaffirmed by the court on several occasions, with Justice Pfeifer's concurrence in *LTC Properties, Inc. v. Licking Cty. Bd. of Revision*, 133 Ohio St.3d 111, 2012-Ohio-3930, echoing 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 \*\*\*." *Id.* at ¶28.

When a party relies on an opinion of value to support its claim, such opinion must be both competent and probative. See, generally, *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096. Such conditions are typically sought to be met through the submission of a written appraisal, prepared and attested to under oath, by a qualified expert who opines a value for tax purposes "as of" the effective tax lien date. Even though only one party may submit a written

“appraisal,” such submission, like all evidence, is subject to this board’s independent review under the preceding standards. See, generally, *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15. In *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13, paragraphs two and three of the syllabus, the court held that “[t]he Board of Tax Appeals is not required to adopt the valuation fixed by any expert or witness” and that it “is vested with wide discretion in determining the weight to be given to evidence and the credibility of witnesses which come before [it].”

Both appraisers relied largely on grocery-anchored strip centers in their respective sales comparison analyses. Mr. Caldwell placed primary weight on this approach, and considered the sale of seven properties, giving most weight to four of them. Mr. Caldwell made adjustments for market condition, location, size, age, and condition, and then concluded to an adjusted value of \$37.50 per square foot, indicating a value of \$7,800,000 per this approach. Mr. Caldwell also performed the income approach as support for his sales comparison approach. In his income approach, Mr. Caldwell capitalized a net operating income of \$1,000,736 at 10.5% plus a tax additur, for an indicated value of \$8,400,000 per this approach. Mr. Caldwell reconciled the two approaches and concluded to an overall indicated value of \$8,000,000 as of January 1, 2012. At the hearing before this board, Biddulph Ridge offered an additional leased fee analysis, in which Mr. Caldwell considered only the value of Giant Eagle’s ground lease without consideration for the affirmative value of the building, reasoning that the building would not contribute to the purchase price if a sale were negotiated with only the ground lease in place. Mr. Caldwell did not provide an adjusted overall opinion of value taking the leased fee analysis into consideration.

Mr. Provencher, on the other hand, placed primary weight on the income approach to value in his analysis, capitalizing a net operating income of \$1,119,352 at capitalization rates of 9.75% and 10.25%, to conclude to an indicated value of \$11,250,000. Mr. Provencher also performed the sales comparison approach, where he considered the sale of six properties, concluding to a value of \$55 per square foot after adjustments, indicating a total value of \$11,560,000. Mr. Provencher concluded to a total indicated value of \$11,300,000 as of January 1, 2012 after reconciling the two approaches.

While there were criticisms to the comparable sales utilized by each appraiser, we note that inherent in the appraisal process is the fact that an appraiser must necessarily make a wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported.

Upon a review of the two appraisals, we find that the sale comparables considered by Mr. Caldwell are more similar to the subject property than those utilized by Mr. Provencher, given their proximity to the nearest interstate. Additionally, we find the income analysis initially performed by Mr. Caldwell and included in his report better reflects the actual experience of the subject property due to its location and market than Mr. Provencher's analysis. We note that although Biddulph Ridge insists that taking into consideration an estimated rent for the Giant Eagle building in the income approach does not value the property as it would sell, the argument it sets forth would essentially provide no contributory value for the building that no one disputes existed on the tax lien date. Although Biddulph Ridge may not own the building, it exists on the parcel and is subject to taxation. Thus, it must be included in the overall taxable value.

Upon review of the record before us, we find that Mr. Caldwell’s appraisal is more persuasive as an indication of value than Mr. Proventure’s analysis. Accordingly, we find Mr. Caldwell’s appraisal is

competent and probative, and the value conclusion is reasonable, well-supported, and the best indication of value as of the tax lien date.

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  
\$8,000,000  
TAXABLE VALUE  
\$2,800,000

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson		
Ms. Clements		
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

IN THE SUPREME COURT OF OHIO

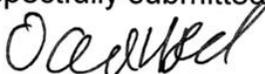
Brooklyn City School District : Case No. \_\_\_\_\_  
Board of Education, :  
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Appellant, : Appeal from the Ohio Board  
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 :  
Cuyahoga County Board of :  
Revision, Cuyahoga County :  
Fiscal Officer, and Biddulph :  
Ridge Extension LLC : PRAECIPE  
 :  
Appellees. :

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TO THE CLERK OF THE OHIO BOARD OF TAX APPEALS:

The Appellant, who has filed a notice of appeal with the Supreme Court of Ohio, make 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 to the Supreme Court of Ohio within thirty (30) days of service hereof as set forth in R.C. 5717.04.

Respectfully submitted,



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Robert A. Brindza (0042549)  
David H. Seed (0066033) (Counsel of Record)  
David A. Rose (0073201)  
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Board of Education

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