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BOARDS OF TAX APPEALS

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IN THE SUPREME COURT OF OHIO

Board of Education of the Huber Heights
City Schools :

Appellant :

v. :

Montgomery County Board of Revision,
Montgomery County Auditor, and
Huber Heights ABG, LLC :

Appellees. :

Case No. 15-1388

Appeal from the Ohio Board of
Tax Appeals - Case No. 2014-4891

**NOTICE OF APPEAL OF THE BOARD OF EDUCATION OF THE
HUBER HEIGHTS CITY SCHOOLS**

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FILED
AUG 24 2015
CLERK OF COURT
SUPREME COURT OF OHIO

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IN THE SUPREME COURT OF OHIO

Board of Education of the Huber Heights :
City Schools

Appellant : Case No. _____

v. :

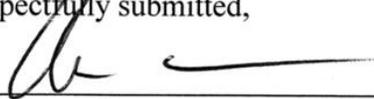
Montgomery County Board of Revision, : Appeal from the Ohio Board of
Montgomery County Auditor, and : Tax Appeals - Case No. 2014-4891
Huber Heights ABG, LLC :

Appellees. :

NOTICE OF APPEAL OF THE BOARD OF EDUCATION OF THE HUBER HEIGHTS
CITY SCHOOLS

Now comes the Appellant, the Board of Education of the Huber Heights 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 Edn. of the Huber Heights City Schools v. Montgomery County Board of Revision, et al.* BTA Case No. 2014-4891, rendered on July 23, 2015, 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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School District

EXHIBIT A - STATEMENT OF ERRORS

(1) The Ohio Board of Tax Appeals (BTA) erred in accepting the June 2012 sale price of the subject property as its true value for tax year 2013 when the property has undergone \$200,000 repairs prior to January 1, 2013.

(2) The BTA erred in failing to hold that repairs made to the subject property in excess of 36% of the properties acquisition price less than 6 months prior to tax lien day was sufficient to overcome the presumption of recency;

(3) The BTA erred by failing to hold that the subject property was physically different than it was on its date of purchase thereby rebutting the presumption of recency of the sale.

(4) The BTA erred by failing to hold that once evidence was submitted to rebut the recency of the sale price due to the costly repairs made to the subject property to prepare it for occupancy, the burden to proof shifted to the party asserting the sale to prove that the substantial repairs had no effect on the value of the subject property.

(5) The BTA erred in holding that the costly repairs made to the subject property prior to tax lien day did not substantially affect the value of the property when the repairs were made specifically for the occupancy of a new tenant and without such repairs, the tenant would not have occupied the property.

(6) The BTA misapplied the holdings in *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996) and *Hotel Statler v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 299 (1997) in that those cases dealt with deductions for repairs that had not yet been made while the issue in the subject matter was the fact that the costly repairs made to the subject property were made specifically for the occupancy of the otherwise vacant property and were completed before tax lien day.

(7) 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 24th day of August, 2015.

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Mark Gillis (0066908)
Attorney for Appellant

IN THE SUPREME COURT OF OHIO

Board of Education of the Huber Heights :
City Schools

Appellant : Case No. _____

v. :

Montgomery County Board of Revision, : Appeal from the Ohio Board of
Montgomery County Auditor, and : Tax Appeals - Case No. 2014-4891
Huber Heights ABG, LLC :

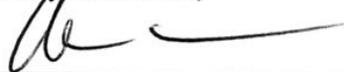
Appellees. :

REQUEST TO CERTIFY ORIGINAL PAPERS TO THE SUPREME COURT OF OHIO

TO: The Clerk of the Ohio Board of Tax Appeals:

The Appellant, who has filed a notice of appeal with the Supreme Court, makes this written demand upon the Clerk and this Board to certify the record of its proceedings and the original papers of this Board and statutory transcript of the Board of Revision in the case of *Board of Edn. of the Huber Heights City Schools v. Montgomery County Board of Revision, et al.* BTA Case No. 2014-4891, rendered on July 23, 2015, to the Supreme Court of Ohio within 30 days of service hereof as set forth in R.C. 5717.04.

Respectfully submitted,



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

Attorneys for Appellant Board of Education

OHIO BOARD OF TAX APPEALS

BOARD OF EDUCATION OF THE HUBER
HEIGHTS CITY SCHOOLS, (et. al.),

CASE NO(S). 2014-4891

Appellant(s),

(REAL PROPERTY TAX)

vs.

DECISION AND ORDER

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

Appellee(s).

APPEARANCES:

For the Appellant(s) - BOARD OF EDUCATION OF THE HUBER HEIGHTS CITY SCHOOLS
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HUBER HEIGHTS ABG, LLC
Represented by:
SARAH BAKER
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WOOSTER, OH 44691

Entered Thursday, July 23, 2015

Mr. Williamson, Ms. Clements, 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 P70 04005 0140, for tax year 2013. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the parties' written argument.

The subject parcel was created for tax year 2013, after a larger parcel, number P70 04005 0056, was split following a 2012 sale of the portion that became the subject property. The subject's total true

value was initially assessed at \$2,199,700. A decrease complaint was filed with the BOR seeking a reduction in value to \$850,000. The appellant board of education ("BOE") filed a countercomplaint in support of maintaining the auditor's values. At the BOR hearing, the appellee property owner, Huber Heights ABG, LLC ("Huber ABG"), relied on evidence of its June 2012 purchase of the property, a decision letter regarding an agreed-upon value for the larger parcel for a prior year, and the testimony of an employee, Matthew Rentschler. Mr. Rentschler testified that Huber ABG purchased the subject in 2012 for \$550,000 and then put approximately \$200,000 into the property before January 1, 2013 to fit the property for the new occupant. Mr. Rentschler explained that since that work was finished, the subject's condition had not changed. Because there had been no change to its condition since the parties agreed to a value of \$850,000 for 2012, Huber ABG contends, that value should have carried over into 2013 when the new parcel was formed. Appellant did not present any independent evidence of value, and moved to dismiss the complaint as a second filing in the interim period because Huber ABG filed a complaint for the prior year. Mr. Rentschler stated that Huber ABG had to file a new complaint because the parcel had just been created and the value did not carry forward. Mr. Rentschler also testified that the property is leased internally within the company and was unsure about the rate. The BOR issued a decision reducing the initially assessed valuation to \$1,282,740, implicitly denying appellant's motion to dismiss the complaint. The BOR noted that it did not consider either the sale or the prior year's values in reaching its decision because the parcel split negated their utility. Instead, the BOR based its decision on the property's "location and condition as testified to." The Appraisal Notes in the transcript also include a comment stating the following: "The Court Decision was for parcel #0056 for TY 2011 & 2012 indicating that this was not a part lot value but for the whole parcel. The change in the property by the split means the court ruling is no longer relevant. A description of what was purchased is not provided. Adj. not per sale but for location & condition. Value Method shifted from cost to income." From this decision, appellant filed the instant appeal.

Appellant argues that the values determined by the BOR cannot be replicated, and that the evidence submitted by Huber ABG is not competent and probative evidence of value. Accordingly, appellant argues, the BOR's reduction was improper, and the auditor's values should be reinstated. Though it acknowledges that there is no evidence to support the BOR's value determination, Huber ABG argues that the BOE did present any affirmative evidence of value and this board should find value consistent with the value of parcel P70 04005 0056 for tax year 2012.

"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.)

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129. The existence of a facially qualifying sale may be confirmed through a variety of means, e.g., purchase agreement, deed, conveyance fee statement, property record card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d

27, 2009-Ohio-5932; *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision*, 138 Ohio St.3d 153, 2014-Ohio-104. Once the existence of a sale is established, “a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm’s-length character between a willing seller and a willing buyer are genuinely present for that particular sale.” *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The court reaffirmed its position in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 138 Ohio St.3d 223, 2014-Ohio-523, ¶14, stating “[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm’s-length transaction.” (Emphasis sic.) Accordingly, the affirmative burden clearly rests with the opponent of using a reported sale price to demonstrate why it does not reflect the property’s value. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325, 327.

Ohio courts have refrained from setting forth a “bright line” test to establish whether a sale of property is sufficiently close to a tax lien date to be presumed to accurately reflect its value. See, generally, *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36, 44, overruled in part on other grounds *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473 (“The question of how long after a sale the sale price is to be considered the best evidence of true value will vary from case to case.”). Such restraint results from the recognition that whether a sale is “recent” to or “remote” from a tax lien date is not decided exclusively upon temporal proximity, but may necessarily involve a multitude of other impacts/considerations. See, e.g., *Cummins Property Servs.*, ¶35 (recency “encompasses all factors that would, by changing with the passage of time, affect the value of the property”); *New Winchester Gardens*, supra (recency factors include “changes that have occurred in the market”).

In the present matter, it is undisputed that the subject property transferred from Muriel Litt, et al., to Huber Heights ABG, LLC on or about June 25, 2012 for \$550,000. It is apparent from the record that the sale involved a portion of parcel number P70 04005 0056, and the portion that transferred was split to become the subject parcel. This split apparently enabled the sellers to retain ownership over the portion of parcel number P70 04005 0056 that it did not transfer during the sale, while reflecting the change in ownership over the part that it conveyed to Huber ABG.

We acknowledge that the Supreme Court has found that a parcel split may so change the character of a parcel that it rebuts the presumption of the recency of the sale. See *Richman Properties, L.L.C. v. Medina Cty. Bd. of Revision*, 139 Ohio St.3d 549, 2014-Ohio-2439. In reaching this conclusion, however, the court clarified that it was based on the facts of that record and emphasized two key details, i.e., that the property owner testified that the purpose of the split was to increase value and that the auditor provided comparable sales evidence to support a higher valuation for subdivided parcels. *Id.* at ¶¶33-34. In the instant appeal, the facts are distinguishable. Nothing in the record shows that the purpose of splitting the parcels was to increase the value of the subject property, and neither appellant nor the county appellees provided any evidence to show that an increase in value was the result. Rather, the evidence more clearly indicates that the change in parcels was to more accurately reflect the ownership as it existed after the sale. We find that the change to the property took place when the ownership of the property transferred because it was the change in ownership that defined the new boundaries of the property, and the creation of the new parcel number for the subject property merely reflected that change. As such, we find that when the parcels split, it did not rebut the presumption of recency.

The record further shows that following the sale, approximately \$200,000 in repairs were made to prepare the subject for the new occupant. Nothing was provided to show that any of the expenditures provided more than cosmetic updates or additional fixtures for the occupant’s use. Taking into consideration all of the facts, and noting that dollar-for-dollar deductions for repairs have consistently

been rejected by this board, following the Ohio Supreme Court's holdings in *Throckmorton v. Hamilton Cty. Bd. of Revision* (1996), 75 Ohio St.3d 227, and *Hotel Statler v. Cuyahoga Cty. Bd. of Revision* (1997), 79 Ohio St.3d 299, we find that although the cost of the repairs was considerable as compared to the sale price, no evidence has been offered to show that these changes substantially changed the property. As such, we find that the property did not undergo such considerable improvement to render the sale remote from 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, 2013, were as follows:

TRUE VALUE
 \$550,000
 TAXABLE VALUE
 \$192,500

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