

IN THE SUPREME COURT OF OHIO

BOARD OF EDUCATION OF THE
WEST CARROLLTON CITY SCHOOLS,

Appellant,

vs.

MONTGOMERY COUNTY AUDITOR, et al.,

Appellees,

:
: Case No. 2015-0389
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: Appeal from the Ohio Board of
: Tax Appeals Case No. 2012-4862
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**REPLY BRIEF OF APPELLANT BOARD OF EDUCATION OF
THE WEST CARROLLTON CITY SCHOOL DISTRICT**

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STATEMENT OF FACTS

In its brief Appellee Carmax recited numerous facts that simply are not in evidence in this case. Many of those factual allegations pertained primarily to the use and history of the property, to circumstances leading up to the 2008 sale of the subject land, and to an earlier year's case involving this same property. At no time in this case did the owner offer any witnesses with any personal involvement in or first-hand knowledge about the sale or the history of the property. At the Board of Revision (BOR) hearing and at the Board of Tax Appeals (BTA) the only evidence in this case regarding the sale consisted of the sale documents that were presented by Appellant. Appellee had no witnesses at the BOR hearing and at the BTA offered the testimony of one witness - an appraiser who had only appraised the vacant land for tax year 2008. Appellee's witness had not appraised the land for tax year 2011 and had never appraised the newly constructed building.

Carmax also made multiple unsupported allegations in its brief regarding the auditor's 2011 valuation of the subject. The record in this case contains no evidence that supports the claims made by Appellee regarding the process utilized by the auditor in the triennial update, regarding who the auditor may or may not have consulted with, or what facts and circumstances the auditor took into consideration when valuing the property for tax year 2011.

In addition to alleging facts not in evidence, Appellee also misstated some facts in its brief. One critical misstatement of the facts was that the Montgomery County auditor "did a triennial reappraisal" for tax year 2011. In fact, 2011 was an update year for Montgomery County and **not** a reappraisal year.

Finally, Appellee maintained that the BTA must have found Appellant's cost evidence to be inadmissible simply because the BTA failed to address the evidence in its decision. While

Appellant agrees that the BTA improperly ignored Appellant's cost evidence, the BTA certainly did not exclude the evidence or find it to be inadmissible. In fact there was no basis whatsoever to exclude the evidence. Although Appellee's counsel argued that the cost evidence should not be considered to be the best evidence of value, the accuracy and authenticity of the documents was stipulated to by that same counsel. The arguments made by Appellee went to the weight of the evidence not the admissibility.

LAW AND ARGUMENT

Under R.C. 5715.19(A) the total value of the subject property (land and building) was at issue before both the Board of Revision and the Board of Tax Appeals and that value was in no way limited by the value on Appellant's

In its brief Appellee Carmax made numerous claims and arguments regarding Appellant's original BOR complaint. Specifically, Appellee erroneously asserted that the "improvements were not a part of the official Complaint Against Valuation filed by the BOE," that the Board of Revision (BOR) and Board of Tax Appeals (BTA) did not have before them the issue of the value of the improvements, and that Appellant's complaint was "limited to the value of the real estate." (Although real estate value includes both the land and the improvements Appellant assumes Appellee meant to say the complaint was limited to the land value.) These allegations are unsupported by the both the facts of this case and the applicable law.

The bases for Appellee's contentions were the use code that was indicated on the complaint, the fact that the total value sought on the complaint equaled the sale price of the land, and the fact that "there was no mention or recitation of the existence of the improvements." Of course, none of these bases in any way limit the jurisdiction of the BOR or the BTA. First, the use code that Appellant utilized on the complaint was the use code taken from the auditor's

records for at least one of the parcels in this case. Second, there is no place on the complaint form that requires a “recitation of the existence of the improvements” including question 8 of the complaint where the current and requested valuations are to be set forth. Total values are requested with no breakdown between land and improvement value. In its complaint, Appellant properly input the auditor’s total current taxable value, which included value for the improvements. Finally, the fact that recent sale referred to by Appellant on line 9 happened to be a sale of the land only in no way limited the jurisdiction of the BOR or the BTA. As a matter of fact, Appellant properly completed the complaint form contesting the value of the subject property in its entirety.

As a matter of law, Appellee failed to cite any legal authority for its claim that the value of the improvements was not properly before the BOR and BTA, perhaps because the law on this issue directly contradicts Appellee’s argument. In *Blatt v. Hamilton Cty. Bd. of Revision*, 123 Ohio St.3d 428, 2009-Ohio-5260, 916 N.E.2d 1065, ¶ 20, this Court responded to this same argument by stating “(w)e find no merit in the auditor's assertion that the BTA ‘became fixated with * * * unnecessarily determining a land value’ because of this court's decision in *Polaris Amphitheater Concerts, Inc. v. Delaware Cty. Bd. of Revision*, 118 Ohio St.3d 330, 2008 Ohio 2454, 889 N.E.2d 103... Indeed, *Polaris* expressly acknowledges that the jurisdiction of boards of revision and, derivatively, that of the BTA is controlled in the first instance by R.C. 5715.19(A). That statute explicitly places the total value of the property (both land and improvements) at issue in an appeal of valuation.”

The *Blatt* case represents important precedent for this case, not only because of the jurisdictional issue discussed above, but because in *Blatt* the BTA determined the value of property based upon the recent land sale plus the actual construction costs of the newly

constructed improvements. The basis for the BTA's value in *Blatt* was exactly the same as the basis for the value requested by Appellant in this case and this Court affirmed the BTA's determination based upon actual construction costs added to a recent land sale price.

Further, the fact that Appellant originally utilized the recent sale price of the land as its requested value in no way limited the valuation process by either the BOR or the BTA. As stated in Appellant's initial brief, Appellant could not obtain any of the actual construction cost information, whether cost or timing, prior to the BTA appeal so Appellant based its initially requested value on the fact that the auditor's 2011 value for the land and the building combined was less than the price paid by the owner for just the land. It was not until Appellee finally complied with Appellant's discovery requests at the BTA that Appellant knew the full extent of the auditor's under-valuation of the subject property. Regardless, neither the BOR nor the BTA were bound by the amount originally requested on Appellant's complaint.

This Court determined long ago that in real property tax cases there are "neither minimum nor maximum limitations on the court's determination of value... save the judicial requirement that the determination be supported by the evidence" and that "in an appeal under R.C. 5717.05, from a decision of a county board of revision concerning the taxable value of real property, the Court of Common Pleas is not limited by the valuation claimed in the taxpayer's complaint." *Jones & Laughlin Steel Corp. v. Lucas Cty. Bd. of Revision*, 40 Ohio St.2d 61, 320 N.E.2d 658, 660 (1974).

In *Cleveland Elec. Illuminating Co. v. Lake Cty. Bd. of Revision*, 80 Ohio St.3d 591, 595, 1998-Ohio-179, 687 N.E.2d 723, the Court applied its holding in *Jones* to the BOR and to BTA appeals stating "(t)here is no requirement that the value of the property, as determined by the board of revision, must match the opinion of value set forth in the complaint." These holdings

were recently reaffirmed in *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, 992 N.E.2d 1117, ¶ 28 and *Mason City Sch. Dist. Bd. of Educ. v. Warren Cty Bd. of Revision*, 138 Ohio St. 3d 153, 163, 2014-Ohio-104, P45, 4 N.E.3d 1027.

The BTA improperly applied this Court’s holding in *Akron City School Dist. Bd. Of Edn. v. Summit Cty. Bd. Of Revision*, 139 Ohio St. 3d 92, 2014-Ohio-1588

The only legal authority cited by Appellee in its brief was this Court’s decision in *Akron City School Dist. Bd. Of Edn. v. Summit Cty. Bd. Of Revision*, 139 Ohio St. 3d 92, 2014-Ohio-1588, as support for its argument that the 2008 land sale was too remote from the tax lien date. But, as argued more fully in Appellant’s initial brief, the BTA mis-applied the holding in *Akron* because the sale in this case was not prior to a reappraisal done by the auditor. The reason for the *Akron* decision was to “prevent a remote sale from controlling over a more recent appraisal.” The *Akron* does not apply here because the critical facts are different. 2011 was not a reappraisal year for Montgomery County and the subject property was not reappraised by the auditor’s office for 2011.

Because *Akron* did not apply the opponent of the sale (Carmax) had the duty to establish that the market had changed from January 2008 to January 2011 and Carmax failed to meet that burden. In fact, Appellee’s appraiser confirmed through his testimony that his value of the subject land would have been about the same in January of 2011 as it was in January of 2008.

The BTA improperly applied *Akron* and failed to perform its statutory duty in this case. It failed to properly consider the sale evidence that was presented by the Board of Education solely because the sale occurred more than 24 months prior to the tax lien date. The BTA also failed to consider any of the cost evidence that was presented by the Board of Education at the BTA

hearing and it failed to independently determine the value of the subject property despite the significant and undisputed evidence that affirmatively negated the auditor's values.

CONCLUSION

For the reasons set forth herein and in Appellant's initial brief, this Court is respectfully requested to reverse the decision of the Board of Tax Appeals and determine that the recent arm's-length sale of the land and the actual construction costs of the improvements affirmatively negated the auditor's values and provided the best evidence of value for the subject property.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served upon the following by electronic mail or by placing a true and correct copy in the United States mail, postage prepaid, this 22nd day of October, 2015:

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