

IN THE SUPREME COURT OF OHIO

CASE NO. 2015-1386

JILLIAN PAVILONIS )  
 )  
 Appellee, )  
 )  
 vs. )  
 )  
 CUYAHOGA COUNTY )  
 BOARD OF REVISION, et al. )  
 )  
 Appellants. )

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**MERIT BRIEF OF APPELLANTS CUYAHOGA COUNTY**

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## STATEMENT OF CASE AND FACTS

Appellee, Jillian Pavilonis filed a property valuation complaint for the property address 9 Trenton Square, T-1, Euclid, Ohio 44143, PPN 649-30-959C, seeking a reduction in value from \$48,000 to \$12,000 for tax year 2013. (Statutory Transcript "S.T.", Exb. A) After a hearing took place at the Cuyahoga County Board of Revision ("BOR"), the BOR issued a no value change notice, and commented that, "The transfer between related parties was not arm's length. The BOR believe that there is a jurisdictional issue due to a second filing by the complainant." (S.T. Exbs. E & G) A "summary appraisal report" was submitted to the BOR, which listed Eric Uchbar as the client, and does not contain the name appellee, Jillian Pavilonis. (S.T. Exb. F)

The following is the chronological sequence from the BOR hearing, Eric Uchbar, and appraiser Ruth Lassister were sworn in. Jillian Pavilonis did not appear. (Audio Transcript "A.T." .45 seconds) Eric Uchbar stated each of the following was correct: the complaint seeks a \$36,000 valuation decrease; and, the BOR stated the property characteristics into the record. (A.T. 1:05) BOR advised Eric Uchbar **he** can present **his** case. (A.T. 1:52) BOR noted a 2012 complaint filed on the same property found no value change. (A.T. 2:00) BOR asked Eric Uchbar to address the 2<sup>nd</sup> filing in the triennium, and he stated Transworld filed the last complaint, my wife filed this one. **We** are now going off the appraisal. (A.T. 2:10) Eric Uchbar stated that he is a member of Transworld, his wife is not affiliated, and **he** transferred the property to his wife. (A.T. 2:27) BOR noted the jurisdiction issue, and asked Eric Uchbar to proceed with **your** case. (A.T. 2:40) Ruth Lassister testifies regarding her appraisal. (A.T. 2:50) Eric Uchbar asks appraiser Lassister direct examination questions. (A.T. 5:00-5:45)

Eric Uchbar stated that: **we** [he and his wife] received \$700 monthly rent from the property; **he** payed the sewer and water bills, and it ran **me [him]** \$50 a month; **his** insurance was \$35 month; and **he** payed \$200 expense for the homeowner association fee. (A.T. 6:00-6:40)

Eric Uchbar then assisted appraiser Lassister with her testimony. (A.T. 8:20-9:40, 11:10-12:30) Eric Uchbar stated that **he** was being assessed at \$48,000, and appraiser Lassister backed this up by using the words **he, him, and you** to describe the value Eric Uchbar was being assessed. (A.T. 13:00- 13:55) In response to the BOR questions of **you** lost occupancy in 2012, and **you** obtained a new tenant in 2013, Erich Uchbar stated that is correct. He also stated that **we** got a new tenant in 2013.(A.T. 14:00-14:45)

Appellee Jillian Pavilonis appealed to the Board of Tax Appeals (“BTA”), and waived appearance. The BTA considered the matter upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the county’s written argument. *Pavilonis v. Cuyahoga County BOR* (July 23, 2015), BTA No. 2014-4517. The county’s written argument contained numerous exhibits which support its’ argument that the complaint herein is barred as a 2<sup>nd</sup> filing in the triennium. In compliance with the BTA’s November 12, 2014 letter, the county submitted its brief with attached exhibits to Jillian Pavilonis, who did not file an objection. (S.T. Exb. J) The BTA’s decision speaks for itself, and the points at issue will be discussed below.

### **LAW AND ARGUMENT**

**PROPOSITION OF LAW NO. 1: THE BTA DECISION THAT COMPLAINT IS NOT BARRED BY R.C. 5715.19(A)(2), AS A SECOND FILING IN THE TRIENNIUM IS UNREASONABLE AND UNLAWFUL, AND BASED ON AN INCORRECT LEGAL CONCLUSION, BECAUSE IT AFFIRMATIVELY APPEARS THAT THE BTA IGNORED BOR TESTIMONY, AND IGNORED DOCUMENTS, WHICH WERE NOT OBJECTED TO, BOTH WHICH SHOW THERE IS NO JURISDICTION FOR THE COMPLAINT HEREIN.**

The county appellees assert that the following excerpts from the BTA decision at

issue, are an improper citation of case law was applied to incorrect facts: "...Mr. Uchbar further testified that the property had transferred from Transworld Investments LLC ("Transworld"), an entity which he is a member, to his wife, though evidence of this transfer is not included in the record....The BOR also discussed a complaint filed for a prior year, but this prior complaint was not included in the transcript. Accordingly, we are unable to consider such evidence in our determination....The Supreme Court has noted that "[f]ailure to certify the entire evidentiary record may prejudice the interest of the proponents of the omitted items, and therefore, boards of revisions should take care to comply with the statutory duty to certify the entire record." *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St. 3d 291, 2011-Ohio-5078, P.27 at fn. 4....At the BOR hearing, Mr. Uchbar did not dispute that an earlier complaint had been filed, though he testified it was filed by Transworld. Mr. Uchbar further testified that although he is a member of Transworld, appellant is not. In their motion, the county appellees acknowledge that Transworld filed the earlier complaint, but argue that this is a multiple filing because Transworld and appellant share the same address. Although we are limited in our analysis because the earlier complaint is not in the record for this board to review, there appears to be no dispute that the complaints were filed by two separate complainants..." *Pavilonis, supra*.

The BOR record at issue in *Vandalia-Butler* was "terse handwritten notes...which referred to an appraisal which was *offered* into evidence, objected to based on hearsay, and not certified to the BTA." *Id.*, at pg. 2, and fn.4. The Court found that the BTA canvassed the sparse evidence in the record, and the BTA's made a crucial error in its exclusive reliance on the BOR's evaluation of the evidence rather than its own. *Id.*, at pg. 3, and 6.

The first footnote in *Vandalia-Butler, supra*, which addressed the "terse handwritten

notes” therein, is relevant herein, and states, “...When a board of revision elects to preserve the hearing in the form of minutes without preparing a transcription or *maintaining an audio record of the proceedings*, the decision potentially affects the ability of the BTA to evaluate the evidence presented to the board of revision, since the BTA will have a mere summary *rather than the actual testimony in its full extent.*” (emphasis added.)

Herein, though the BOR complied with footnote four of *Vandalia-Butler, supra*, because it certified the entire record of the evidence before it to the BTA, and more importantly herein, it complied with footnote one, because it certified an audio record of the proceedings to the BTA, wherein the actual testimony could be considered by the BTA in its full context. Clearly, that testimony, by itself, showed that the complaint herein was a second filing in the triennium, and no other documentation was needed, as claimed by the BTA.

The above statement of facts, from the full testimony of the audio record certified to the BTA, when evaluated in the full extent, show that the complaint herein is a second filing in the triennium. Eric Uchbar admitted that he filed the first complaint as a member of Transworld. However, he claimed Transworld filed the last complaint, my wife filed this one. We are now going off the appraisal. Eric Uchbar stated that he is a member of Transworld, his wife is not affiliated, and he transferred the property to his wife. This Court may take, and the BTA should have taken judicial notice for legal fact that Eric Uchbar has an ownership interest in the property he transferred to his wife, during their marriage. Apparently, this is understood from his testimony that **we** filed the second complaint based on the appraisal. Although he was forthcoming in his testimony that appellant was his wife, he understood his ownership, circumstantially the deed and valuation was filed under Jillian Pavilonis, instead of Jillian Uchbar, the name appellant had previously, and currently uses, for that very reason.

Furthermore, the entire testimony in full context regarding the property, of Eric Uchbar uses the words: **he, his, me, we, and your**. At no time did he testify that his wife solely did anything regarding the property, i.e., she did or does, her expenses. Moreover, appraiser Ruth Lassister's testimony is identical and uses the word's **he, him, and you** referring to Eric Uchbar, and never mentions his wife's involvement. Apparently the reason for this is found in her appraisal, which lists Eric Uchbar as the client, and does not mention his wife.

Clearly, the full testimony in the BOR hearing audio admits that this complaint is a second filing in the triennium, and therefore, there is no jurisdiction to consider it at any level. The BTA unreasonably and unlawfully found that it need the prior complaint to be included in the record to make such a determination.

In further support, county appellees submit that *Vandy-Butler, supra*, states: "...the BTA has the duty to independently weigh and evaluate all evidence properly before it in arriving at its own decision, citing *Hillard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* 128 Ohio St. 3d 565, 2011-Ohio-2258, quoting *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St. 3d 13, 15 (BTA must reach its own independent judgment based on weighing of evidence contained in the BOR transcript. *Vanday-Butler, supra*, at 5 and par. 13. When *Columbus Bd. of Edn., supra*, is examined, it is clear, that the BTA misapplied this line of cases in reaching its incorrect legal conclusion.

R.C. 5717.01 provides that upon filing of an appeal from the decision of the county board of revision, the board of revision "shall thereupon certify to the board of tax appeals a transcript of the record of the proceedings of the county board of revision\*\*\*and all evidence offered in connection therewith." R.C. 5703.02(A)(2) provides that for appeals from a board of revision,

the BTA is to “hear and determine all appeals of questions of law and fact.” With this background, this Court considered *Columbus Bd. of Edn., Id.* at 15.

The parties waived presentation of further evidence and agreed that the only evidence presented to the BOR was to be considered by the BTA. (There is no such agreement in the instant case.) Succinctly, the BTA presumed the regularity of the BOR decision. The point is, if the only evidence before the BTA is the statutory transcript from the board of revision, the BTA must make its own independent judgment based on its weighing of the evidence contained in the transcript. *Id.* The court also found that documents that were not part of the original record from the BOR and were submitted **after** the BTA hearing, must be disregarded by the BTA. The rest of the evidence is to be weighed independently by the BTA. *Id.*, at 16-17, citing *Orange City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1996), 74 Ohio St. 3d 415 (The BTA has discretion in admitting evidence, weighing it, and granting credibility and testimony, and its decision can be reversed for abuse of discretion.)

The BTA decision herein, acknowledged the county’s brief that argued that the complaint was a multiple filing, because Transworld and appellant Pavilonis shared the same address, however, it reached an incorrect legal conclusion that the prior complaint was required to be in the record, despite the testimony herein, and therefore, there was no dispute that the complaints were filed by two separate complainants. Accordingly, the BTA decision is unreasonable and unlawful because it fails to follow its own precedent, cited in county appellees argument thereto, where although it is undisputed that appellant Pavilonis and Eric Uchbar are married, and both share the same address with Transworld, the BTA abused its discretion, because it did not have jurisdiction herein, because the complaint is a 2<sup>nd</sup> filing in the triennium, supported by testimony in the BOR audio record, documentary evidence submitted by county appellees prior to the BTA

decision, and not objected to, and legal precedent cited to by country appellees, *inter alia*, *Transworld Investments L.L.C. (c/o Eric Uchbar) v. Cuyahoga County BOR* (Jan. 15, 2014), BTA No. 2013-4113 and 2013-4114.

Accordingly, the BTA decision should be reversed, and the BOR decision affirming the fiscal officer's valuation should be reinstated.

**PROPOSITION OF LAW NO. II: THE BTA DECISION IS UNREASONABLE, UNLAWFULL, AND AN ABUSE OF DISCRETION BECAUSE THE COMPLAINANT, AND ALLEGED OWNER, WHO APPARENTLY PREPARED THE COMPLAINT, DID NOT APPEAR BEFORE THE BOR AND BTA, AND WAS REPRESENTED BY HER HUSBAND, WHO ALTHOUGH HE IS NOT AN ATTORNEY, AND ALLEGEDLY NOT AN OWNER, MADE LEGAL ARGUMENTS, EXAMINED AN APPRAISAL WITNESS, AND UNDERTOOK OTHER TASKS THAT CAN BE PERFORMED ONLY BY AN ATTORNEY, THEREBY CAUSING THE DECISION TO BE BASED ON DEFECTIVE EVIDENCE, WHICH THEREBY THE CASE SHOULD HAVE BEEN DISMISSED FOR LACK OF JURISDICTION.**

The issue herein involves the unauthorized practice of law, by Eric Uchbar, at the BOR hearing, thereby depriving jurisdiction at all levels to consider the complaint. The issue does not involve the filing of the complaint, and is argued in the alternative to the first proposition of law.

A lay person may not make legal arguments, examine witness, or undertake any other tasks that can be performed only by an attorney before a BOR. *Dayton Supply & Tool, Inc. v. Montgomery Cty. Bd. of Revision* 111 Ohio St. 3d 367, 2006-Ohio-5852; and, may not prepare an exposition of legal arguments, which may be advanced through a hearing and a brief. *See, Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* 134 Ohio St. 3d 529, 2012-Ohio-5680, at par. 23.

At the BOR hearing, Eric Uchbar engaged in the authorized practice of law by: advancing a summary appraisal report to the BOR, which listed him as the client; advanced and made legal argument why the complaint was not a second filing in the triennium, thereby invoking jurisdiction; asks his appraiser direct examination questions; assisted his appraiser

with her testimony; and, throughout the hearing advanced and made comparable value legal arguments.

Accordingly, the complaint herein should be dismissed due to lack of jurisdiction at all levels, due to the unauthorized practice of law. Alternatively, the fiscal officer's value should be reinstated, because all evidence in support of appellee Pavilonis' complaint is defective, because it was obtained through the unauthorized practice of law.

### **CONCLUSION**

The BOR was correct in its belief that there was a jurisdictional issue due to a second filing by the complainant, because the transfer between related parties was not arms-length. The BOR analyzed the transfer between related parties in the context, that the related parties, were actually the same parties in both filings. The fact that the second complaint was not filed in the complainant's, married name, a name that she had been using previously, and after, the second filing, infers that the related parties knew that there was a jurisdictional issue with the second filing in the same triennium. Also, when the BOR hearing testimony is considered in its full context, the only conclusion is that this complaint is a second filing in the same triennium. The prior complaint is not needed to physically review, to reach this conclusion, as the BTA stated in its incorrect legal conclusion. Moreover, the county's documentary evidence submitted to the BTA prior to the hearing date, and not objected to by the related parties, supports the foregoing.

Accordingly, the County Appellants respectfully request that this Honorable Court reverse the decision of the BTA, and reinstate the BOR decision, which affirmed the fiscal officer's valuation \$48,000, because there is no jurisdiction herein, at any level, due to the second filing in the triennium.

In the alternative, it is requested, that this Honorable Court reach the same result, because the BTA abused its discretion by unlawfully and unreasonably, basing its incorrect legal conclusion, on improper defective evidence that was advanced by the unauthorized practice of law at the BOR hearing.

These requests are separate and distinct from each other, and the granting of one negates the other. If Eric Uchbar has an ownership interest, there is no jurisdiction due the second filing, although he could represent himself, if it was a first filing. If he does not have an ownership interest, then there is no jurisdiction due to his unauthorized practice of law.

Respectfully submitted,

TIMOTHY J. McGINTY, Prosecuting Attorney  
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing memorandum in response was mailed  
this 30<sup>th</sup> day of November, 2015 to the following parties:

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Assistant Prosecuting Attorney

**IN THE SUPREME COURT  
STATE OF OHIO  
APPEAL FROM OHIO BOARD OF TAX APPEALS**

**JILLIAN PAVILONIS**

Appellee

**SUPREME COURT CASE NO.**

v.

**CUYAHOGA COUNTY BOARD OF  
REVISION, CUYAHOGA COUNTY  
FISCAL OFFICER, TAX COMMISSIONER  
OF THE STATE OF OHIO**

Appellants

**BOARD OF TAX APPEALS  
CASE NO. 2014-4517**

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**NOTICE OF APPEAL**

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Appx. Pg. ("A.P.") 1

**IN THE SUPREME COURT  
STATE OF OHIO  
APPEAL FROM OHIO BOARD OF TAX APPEALS**

JILLIAN PAVILONIS

Appellee

SUPREME COURT CASE NO.

v

CUYAHOGA COUNTY BOARD OF  
REVISION, CUYAHOGA COUNTY  
FISCAL OFFICER, TAX COMMISSIONER  
OF STATE OF OHIO

Appellants

BOARD OF TAX APPEALS  
CASE NO. 2014-4517

NOTICE OF APPEAL TO THE OHIO  
SUPREME COURT PURSUANT TO  
OHIO REVISED CODE §5717.04

The Appellees Cuyahoga County Fiscal Officer and Cuyahoga County Board of Revision, by and through counsel, hereby give notice of their appeal to the Supreme Court of the State of Ohio from the Decisions and Order of the Ohio Board of Tax Appeals, rendered on July 23, 2015. A copy of which is attached hereto, and which is incorporated herein as though fully rewritten in this Notice of Appeal. (Exb. A)

Appellees hereby complain of the following errors in the Decision and Order of the Board of Tax Appeals:

Assignment of Errors

1. The board of tax appeals decision is unreasonable and unlawful, because the complainant, and alleged sole owner, Jillian Pavilonis Uchbar, who prepared the complaint did not appear before the board of revision, and also waived appearance at the board of tax

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appeals, and thereby, the board of tax appeals decision is an abuse of discretion, because its' based on defective evidence that should not have been considered, because the evidence was presented by complainant's spouse, Eric Uchbar, who is not an attorney, and allegedly not an owner, and he made legal arguments, examined a witness, and undertook other tasks that can be performed only by an attorney.

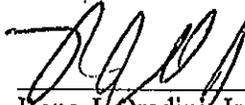
2. The board of tax appeals decision is unreasonable and unlawful because it fails to follow precedent where although it is undisputed Jillian Pavolonis and Eric Uchbar are married, and allegedly owned the property at different times, the board of tax appeals abused its' discretion because it did not have jurisdiction over this matter, because it is a second filing in a triennium, because although Eric Uchbar transferred the property to his wife from Transworld Investments LLC, which he is a member, he still has an interest in the property due to his wife's ownership.
3. The board of tax appeals decision is unreasonable and unlawful because it fails to follow precedent where although it is undisputed Jillian Pavolonis and Eric Uchbar are married, and allegedly owned the property at different times, the board of tax appeals abused its' discretion because it did not have jurisdiction over this matter, because it is a second filing in a triennium, whereby, the BTA ignored precedent, the record herein, and *Transworld Investments L.L.C. (c/o Eric J. Uchbar) v. Cuyahoga County BOR, et al.* (Jan. 15, 2014), BTA No. 2013-4113 and 2013-4114 (Exb. B), which all show that the foregoing parties have the same address.
4. The board of tax appeals decision is unreasonable and unlawful because it fails to follow precedent where although it is undisputed Jillian Pavolonis and Eric Uchbar are married, and allegedly owned the property at different times, the board of tax appeals abused its' discretion because it did not have jurisdiction over this matter, because it is a second filing in a triennium, whereby, the BTA ignored evidence of the sham property transfer from Eric Uchbar to complainant Jillian Pavolonis, where the record shows that she actually goes by the name Jillian Uchbar.
5. The board of tax appeals decision is unreasonable and unlawful because it fails to follow precedent where although it is undisputed Jillian Pavolonis and Eric Uchbar are married, and allegedly owned the property at different times, the board of tax appeals abused its' discretion because it did not have jurisdiction over this matter, because it is a second filing in a triennium, whereby, the BTA ignored the testimony of Eric Uchbar, although presented in an unauthorized practice of law context, in which on numerous occasions he used the words "me" and "I" explaining his total involvement in the property, and not at one time was there any testimony regarding the complainant's involvement in the property, in any aspect, thereby evidencing Eric Uchbar's ownership interest in the property.

Appellant requests that the Supreme Court vacate the Board of Tax Appeals decision and

order the Board of Tax Appeals to determine that the value of the subject property for the 2013 triennium at the fair market value determined by the County Fiscal Office at \$48,000.

Respectfully submitted,

TIMOTHY McGINTY, Prosecuting  
Attorney for Cuyahoga County, Ohio



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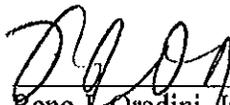
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*Attorneys for Appellants Cuyahoga County  
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PROOF OF SERVICE

I hereby certify that a copy of this Notice of appeal was sent this 24<sup>th</sup> day of August, 2015 by certified mail, return receipt requested to:

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---

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Assistant Prosecuting Attorney

A.P. 4

OHIO BOARD OF TAX APPEALS

JILLIAN PAVILONIS, (et. al.),

CASE NO(S). 2014-4517

Appellant(s),

(REAL PROPERTY TAX)

vs.

DECISION AND ORDER

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

Appellee(s).

APPEARANCES:

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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 649-30-959C, 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 county appellees' written argument.

The subject's total true value was initially assessed at \$48,000. A decrease complaint was filed with the BOR seeking a reduction in value to \$12,000. At the BOR hearing, appellant relied on the testimony of her husband, Eric Uchbar, as well as the testimony and written report of appraiser Ruth Lassiter, who opined that the subject's value was \$18,000 as of January 1, 2013. Mr. Uchbar testified about the subject property's occupancy and rental income, along with his knowledge of the area. Mr. Uchbar further testified that the property had transferred from Transworld Investments LLC ("Transworld"), an entity of which he is a member, to his wife, though evidence of this transfer is not included in the record. The BOR provided a list of sales of properties for Ms. Lassiter to review and make comment, though this list of sales was likewise not included in the transcript. The BOR also discussed a complaint filed for a prior year, but this prior complaint was also not included in the transcript. Accordingly, we are unable to consider such evidence in our determination. We remind the BOR that parties and various tribunals rely upon boards of revision to fulfill their statutory duties to create and

(Exh. A)  
A.P. 5

maintain a record capable of being reviewed on appeal. R.C. 5715.08; R.C. 5717.01. The Supreme Court has noted that “[f]ailure to certify the entire evidentiary record may prejudice the interest of the proponents of the omitted items, and therefore, boards of revision should take care to comply with the statutory duty to certify the entire record.” *Vandalta-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078, ¶27 at fn. 4. (Emphasis in original.)

Following the hearing, the BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. On appeal, appellant again relies on Ms. Lassiter’s appraisal to establish the true value of the property. The county appellees argue that there was not an arm’s-length sale and that there appears to be a jurisdictional issue based on appellant’s filing multiple complaints within the same interim period.

At the outset, we will address the county appellees’ jurisdictional argument. R.C. 5715.19(A)(2) provides, with limited exceptions, that “No person, board, or officer shall file a complaint against the valuation or assessment of any parcel that appears on the tax list if it filed a complaint against the valuation or assessment of that parcel for any prior tax year in the same interim period.” At the BOR hearing, Mr. Uchbar did not dispute that an earlier complaint had been filed, though he testified it was filed by Transworld. Mr. Uchbar further testified that although he is a member of Transworld, appellant is not. In their motion, the county appellees acknowledge that Transworld filed the earlier complaint, but they argue that it is still a multiple filing because Transworld and appellant share the same address. Although we are limited in our analysis because the earlier complaint is not in the record for this board to review, there appears to be no dispute that the complaints were filed by two separate complainants. Thus, the 2013 complaint filed by appellant is not prohibited by R.C. 5715.19(A)(2), and the BOR properly exercised jurisdiction.

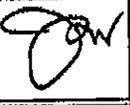
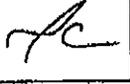
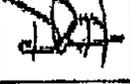
“When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision.” *Columbus City School Dist. Bd. of Edn. v. Franklin 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.)

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 appellant’s appraisal evidence, which provides an opinion of value as of tax lien date, was prepared for tax valuation purposes, and attested to by a qualified expert, we find the appraisal to be competent and probative and the value conclusion reasonable and well-supported.

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:

A.P. 6

TRUE VALUE  
\$18,000  
TAXABLE VALUE  
\$6,300

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

OHIO BOARD OF TAX APPEALS

Transworld Investments L.L.C. (c/o Eric J. Uchbar),

Appellant,

vs.

Cuyahoga County Board of Revision and Cuyahoga County Fiscal Officer,

Appellees.

CASE NOS. 2013-4113 and 2013-4114

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant - Eric J. Uchbar, Member Transworld Investments L.L.C. 2543 Hilltop Rd. Richmond Hts., Ohio 44143

For the County Appellees - Timothy J. McGinty Cuyahoga County Prosecuting Attorney Reno J. Oradini, Jr. Assistant Prosecuting Attorney Courts Tower, 8th Floor 1200 Ontario Street Cleveland, Ohio 44113

Entered JAN 15 2014

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

The fiscal officer determined that the total true values of the subject properties, parcel numbers 641-18-053 and 649-30-959C, were \$46,800 and \$48,000, respectively, for tax year 2012. The appellant filed decrease complaints with the board of revision ("BOR") seeking reductions in value of the properties to \$14,000, and \$14,100, indicating that the properties last sold for those amounts in arm's-length transactions. Hearings were convened before the BOR, and Eric Uchbar, a member of the owner, testified that parcel number 641-18-053 was purchased from a bank in March 2011 for \$14,000. He further indicated that, between the date of purchase and

1 A complaint against the value of parcel number 641-18-053 was also filed by David Lynch; however, that complaint was dismissed as a duplicate of the complaint filed by Eric Uchbar on behalf of Transworld Investments.

Exhibit B

A.P. 2

tax lien date, the property's roof was replaced at a cost of between \$7,000 to \$8,000. As to parcel number 649-30-959C, Mr. Uohbar testified that the property was purchased in February 2008 for \$14,100, and presented the 2012 valuation of a comparable property in the same condominium complex. After considering the evidence presented, the BOR decreased the value of parcel number 641-18-053 to \$22,000, and found that no change in value was warranted for parcel number 649-30-959C. Appellant thereafter filed the instant appeals. The parties waived the opportunity to appear before this board to provide additional evidence or testimony. Therefore, these matters are considered upon the notice of appeal and the transcript certified by the BOR pursuant to R.C. 5717.01.

The appellant must prove the right to the value asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336. When determining value, 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."<sup>2</sup> *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129.

Here, although appellant has presented sales of the subject properties, we find only the sale of parcel number 641-18-053 to be recent to tax lien date 2012. We find that the sale of parcel number 649-30-959C, which occurred approximately forty-six months before tax lien date, is not a recent sale.<sup>3</sup> It is therefore the order of this board that the subject properties' true and taxable values, as of January 1, 2012, were as follows:

---

<sup>2</sup> Ohio courts have declined to establish a "bright line" test for determining whether a particular sale is "recent" to or "remote" from a tax lien date, and the Supreme Court has made it clear that the mere passage of time does not, per se, render a sale unreliable. See, e.g., *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059 (reversing this board's decision and ordering that the property's taxable value as of January 1, 2002 be based upon its sale which occurred in October 2003, twenty-two months after tax lien date).

<sup>3</sup> While Mr. Uohbar also presented evidence regarding the fiscal officer's valuation of a comparable property, as support for the requested decrease for parcel number 649-30-959C, "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJK Investments, Inc. v. Licking Cty. Bd. of Revision* (1996), 76 Ohio St.3d 29, at 31.

Parcel no. 641-18-053

	TRUE VALUE	TAXABLE VALUE
Total	\$ 14,000	\$ 4,900

Parcel no. 649-30-959C

	TRUE VALUE	TAXABLE VALUE
Total	\$ 48,000	\$ 16,800

It is the order of the Board of Tax Appeals that the Cuyahoga County Fiscal Officer list and assess the subject properties 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



7118 9042 9551 1869 5913

Scan this QR code with your smartphone to see your complaints status online.



Cuyahoga County Administrative Headquarters  
Board of Revision - 2nd Floor  
2079 E 9th St  
Cleveland, OH 44115

PAVILONIS, JILLIAN  
1 TRENTON SQ  
UNIT T-9  
CLEVELAND, OH 44143

RE: 649-30-959C-2013  
PAVILONIS, JILLIAN

**DECISION NOTICE**

11/4/2014

Complaint #: 649-30-959C-2013

The Board of Revision has rendered a decision for Tax Year 2013.

The following page describes the details for each parcel that was decided on for this complaint. Each parcel will have one of three possible decisions: No Change, Dismissed or Value Change.

Parcel Number: 649-30-959C	Total Current Values	Total New Values	Decision
			No Change
Land	\$4,800	\$4,800	\$0
Building	\$43,400	\$43,400	\$0
Total	\$48,000	\$48,000	\$0

Pursuant to Ohio Revised Code sections 5717.01 and 5717.05, this decision may be appealed directly to the Board of Tax Appeals or Court of Common Pleas **within 30 days of the date of mailing of this letter**. After the 30 days have expired, any value change(s) will be processed.

BOARD OF TAX APPEALS  
Rhodes Tower  
30 East Broad St, 24th Floor  
Columbus, OH 43215

or

Cuyahoga County Court of Common Pleas  
Justice Center, Clerk of Courts Office  
1200 Ontario St  
Cleveland, OH 44113

614-466-6700 or <http://bta.ohio.gov>

216-443-7974 \* Administrative Appeal Fee

If you have any questions, please contact the Board of Revision at 216-443-7195.

Respectfully,

*Shelley Davis*  
Shelley Davis, Administrator

Cuyahoga County Board of Revision  
cc: School Board and/or Attorney if applicable

EXHIBIT G

A.P. 11



# Oral Hearing Journal Summary

## Board A on 10/27/2014 at 11:20 AM

### 649-30-959C-2013

**Appearances:**

Eric J. Uchbar, Husband  
 Ruth Lassiter, Appraiser

**Board Member Appearances:**

Bill McAdams  
 David Harmon  
 Tamzin O'Neil

Witnesses were sworn in: **No**The hearing was taped: **Yes**

Values in Gray indicate the Complaint has been withdrawn

**Complaints heard on:**

Complaint	Complainant	Owner	Attorney	Opinion	Market	Difference
649-30-959C-2013		PAVILONIS, JILLIAN		\$12,000	\$48,000	(\$36,000)

**Parcels heard on:**

Parcel Number	LUC	Owner	Address	Land Value	Building Value	Market Total
649-30-959C	5500	PAVILONIS, JILLIAN	9 TRENTON SQ T-1 EUCLID, OH 44143	\$4,600	\$43,400	\$48,000

**Exhibits and Evidence:**

Complaint	Party	Exhibit
649-30-959C-2013	BOR Research	Other Comparable King Report

Complaint	Evidence Scan Date	File Name
649-30-959C-2013	10/23/2014 9:50:18 AM	64930959C2013EVIDENCE2310141816.pdf

**Decision(s) Rendered - Value Decisions:**

Parcel Number	Market Land	Market Building	Market Total	BOR Land	BOR Building	BOR Total	Difference
649-30-959C	\$4,600	\$43,400	\$48,000	\$4,600	\$43,400	\$48,000	\$0

**Decision(s) Rendered - Dismissals:**

No Dismissed Parcels for this Hearing

**Comments / Rationale:**

Commenter	Comment
David Harmon	The transfer between parties was not an arms length transaction. The BOR believe that there is a jurisdictional issue due to a second filing by the complainant.

**Signatures:**

Bill McAdams

David Harmon

Tamzin O'Neil

# EXHIBIT E

## **5703.02 [Operative Until 1/1/2016] Board of tax appeals - powers and duties.**

There is hereby created the board of tax appeals, which shall exercise the following powers and perform the following duties:

(A) Exercise the authority provided by law to hear and determine all appeals of questions of law and fact arising under the tax laws of this state in appeals from decisions, orders, determinations, or actions of any tax administrative agency established by the law of this state, including but not limited to appeals from:

(1) Actions of county budget commissions;

(2) Decisions of county boards of revision;

(3) Actions of any assessing officer or other public official under the tax laws of this state;

(4) Final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the tax commissioner;

(5) Adoption and promulgation of rules of the tax commissioner.

(B) Appoint a secretary of the board of tax appeals, who shall serve in the unclassified civil service at the pleasure of the board, and any other employees as are necessary in the exercise of the powers and the performance of the duties and functions that the board is by law authorized and required to exercise, and prescribe the duties of all employees, and to fix their compensation as provided by law;

(C) Maintain a journal, which shall be open to public inspection and in which the secretary shall keep a record of all of the proceedings and the vote of each of its members upon every action taken by it;

(D) Adopt and promulgate, in the manner provided by section 5703.14 of the Revised Code, and enforce all rules relating to the procedure of the board in hearing appeals it has the authority or duty to hear, and to the procedure of officers or employees whom the board may appoint; provided that section 5703.13 of the Revised Code shall apply to and govern the procedure of the board. Such rules shall include, but need not be limited to, the following:

(1) Rules governing the creation and implementation of a mediation program, including procedures for requesting, requiring participation in, objecting to, and conducting a mediation;

(2) Rules requiring the tax commissioner, county boards of revision, and municipal boards of appeal created under section 718.11 of the Revised Code to electronically file any transcript required to be filed with the board of tax appeals, and instructions and procedures for the electronic filing of such transcripts.

(3) Rules establishing procedures to control and manage appeals filed with the board. The procedures shall include, but not be limited to, the establishment of a case management schedule that shall include expected dates related to discovery deadlines, disclosure of evidence, pre-hearing motions, and the hearing, and other case management issues considered appropriate.

Amended by 130th General Assembly File No. 37, HB 138, §1, eff. 10/11/2013 and 1/1/2015.

## **5715.19 Complaint against valuation or assessment - determination of complaint - tender of tax - determination of common level of assessment.**

(A) As used in this section, "member" has the same meaning as in section 1705.01 of the Revised Code.

(1) Subject to division (A)(2) of this section, a complaint against any of the following determinations for the current tax year shall be filed with the county auditor on or before the thirty-first day of March of the ensuing tax year or the date of closing of the collection for the first half of real and public utility property taxes for the current tax year, whichever is later:

(a) Any classification made under section 5713.041 of the Revised Code;

(b) Any determination made under section 5713.32 or 5713.35 of the Revised Code;

(c) Any recoupment charge levied under section 5713.35 of the Revised Code;

(d) The determination of the total valuation or assessment of any parcel that appears on the tax list, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code;

(e) The determination of the total valuation of any parcel that appears on the agricultural land tax list, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code;

(f) Any determination made under division (A) of section 319.302 of the Revised Code.

If such a complaint is filed by mail or certified mail, the date of the United States postmark placed on the envelope or sender's receipt by the postal service shall be treated as the date of filing. A private meter postmark on an envelope is not a valid postmark for purposes of establishing the filing date.

Any person owning taxable real property in the county or in a taxing district with territory in the county; such a person's spouse; an individual who is retained by such a person and who holds a designation from a professional assessment organization, such as the institute for professionals in taxation, the national council of property taxation, or the international association of assessing officers; a public accountant who holds a permit under section 4701.10 of the Revised Code, a general or residential real estate appraiser licensed or certified under Chapter 4763. of the Revised Code, or a real estate broker licensed under Chapter 4735. of the Revised Code, who is retained by such a person; if the person is a firm, company, association, partnership, limited liability company, or corporation, an officer, a salaried employee, a partner, or a member of that person; if the person is a trust, a trustee of the trust; the board of county commissioners; the prosecuting attorney or treasurer of the county; the board of township trustees of any township with territory within the county; the board of education of any school district with any territory in the county; or the mayor or legislative authority of any municipal corporation with any territory in the county may file such a complaint regarding any such determination affecting any real property in the county, except that a person owning taxable real property in another county may file such a complaint only with regard to any such determination affecting real property in the county that is located in the same taxing district as that person's real property is located. The county auditor shall present to the county board of revision all complaints filed with the auditor.

(2) As used in division (A)(2) of this section, "interim period" means, for each county, the tax year to which section 5715.24 of the Revised Code applies and each subsequent tax year until the tax year in which that section applies again.

No person, board, or officer shall file a complaint against the valuation or assessment of any parcel that appears on the tax list if it filed a complaint against the valuation or assessment of that parcel for any prior tax year in the same interim period, unless the person, board, or officer alleges that the valuation or assessment should be changed due to one or more of the following circumstances that occurred after the tax lien date for the tax year for which the prior complaint was filed and that the circumstances were not taken into consideration with respect to the prior complaint:

(a) The property was sold in an arm's length transaction, as described in section 5713.03 of the Revised Code;

(b) The property lost value due to some casualty;

(c) Substantial improvement was added to the property;

(d) An increase or decrease of at least fifteen per cent in the property's occupancy has had a substantial economic impact on the property.

(3) If a county board of revision, the board of tax appeals, or any court dismisses a complaint filed under this section or section 5715.13 of the Revised Code for the reason that the act of filing the complaint was the unauthorized practice of law or the person filing the complaint was engaged in the unauthorized practice of law, the party affected by a decrease in valuation or the party's agent, or the person owning taxable real property in the county or in a taxing district with territory in the county, may refile the complaint, notwithstanding division (A)(2) of this section.

(4) Notwithstanding division (A)(2) of this section, a person, board, or officer may file a complaint against the valuation or assessment of any parcel that appears on the tax list if it filed a complaint against the valuation or assessment of that parcel for any prior tax year in the same interim period if the person, board, or officer withdrew the complaint before the complaint was heard by the board.

(B) Within thirty days after the last date such complaints may be filed, the auditor shall give notice of each complaint in which the stated amount of overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination is at least seventeen thousand five hundred dollars to each property owner whose property is the subject of the complaint, if the complaint was not filed by the owner or the owner's spouse, and to each board of education whose school district may be affected by the complaint. Within thirty days after receiving such notice, a board of education; a property owner; the owner's spouse; an individual who is retained by such an owner and who holds a designation from a professional assessment organization, such as the institute for professionals in taxation, the national council of property taxation, or the international association of assessing officers; a public accountant who holds a permit under section 4701.10 of the Revised Code, a general or residential real estate appraiser licensed or certified under Chapter 4763. of the Revised Code, or a real estate broker licensed under Chapter 4735. of the Revised Code, who is retained by such a person; or, if the property owner is a firm, company, association, partnership, limited liability company, corporation, or trust, an officer, a salaried employee, a partner, a member, or trustee of that property owner, may file a complaint in support of or objecting to the amount of alleged overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination stated in a previously filed

complaint or objecting to the current valuation. Upon the filing of a complaint under this division, the board of education or the property owner shall be made a party to the action.

(C) Each board of revision shall notify any complainant and also the property owner, if the property owner's address is known, when a complaint is filed by one other than the property owner, by certified mail, not less than ten days prior to the hearing, of the time and place the same will be heard. The board of revision shall hear and render its decision on a complaint within ninety days after the filing thereof with the board, except that if a complaint is filed within thirty days after receiving notice from the auditor as provided in division (B) of this section, the board shall hear and render its decision within ninety days after such filing.

(D) The determination of any such complaint shall relate back to the date when the lien for taxes or recoupment charges for the current year attached or the date as of which liability for such year was determined. Liability for taxes and recoupment charges for such year and each succeeding year until the complaint is finally determined and for any penalty and interest for nonpayment thereof within the time required by law shall be based upon the determination, valuation, or assessment as finally determined. Each complaint shall state the amount of overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect classification or determination upon which the complaint is based. The treasurer shall accept any amount tendered as taxes or recoupment charge upon property concerning which a complaint is then pending, computed upon the claimed valuation as set forth in the complaint. If a complaint filed under this section for the current year is not determined by the board within the time prescribed for such determination, the complaint and any proceedings in relation thereto shall be continued by the board as a valid complaint for any ensuing year until such complaint is finally determined by the board or upon any appeal from a decision of the board. In such case, the original complaint shall continue in effect without further filing by the original taxpayer, the original taxpayer's assignee, or any other person or entity authorized to file a complaint under this section.

(E) If a taxpayer files a complaint as to the classification, valuation, assessment, or any determination affecting the taxpayer's own property and tenders less than the full amount of taxes or recoupment charges as finally determined, an interest charge shall accrue as follows:

(1) If the amount finally determined is less than the amount billed but more than the amount tendered, the taxpayer shall pay interest at the rate per annum prescribed by section 5703.47 of the Revised Code, computed from the date that the taxes were due on the difference between the amount finally determined and the amount tendered. This interest charge shall be in lieu of any penalty or interest charge under section 323.121 of the Revised Code unless the taxpayer failed to file a complaint and tender an amount as taxes or recoupment charges within the time required by this section, in which case section 323.121 of the Revised Code applies.

(2) If the amount of taxes finally determined is equal to or greater than the amount billed and more than the amount tendered, the taxpayer shall pay interest at the rate prescribed by section 5703.47 of the Revised Code from the date the taxes were due on the difference between the amount finally determined and the amount tendered, such interest to be in lieu of any interest charge but in addition to any penalty prescribed by section 323.121 of the Revised Code.

(F) Upon request of a complainant, the tax commissioner shall determine the common level of assessment of real property in the county for the year stated in the request that is not valued under section 5713.31 of the Revised Code, which common level of assessment shall be expressed as a percentage of true value and the common level of assessment of lands valued under such section,

which common level of assessment shall also be expressed as a percentage of the current agricultural use value of such lands. Such determination shall be made on the basis of the most recent available sales ratio studies of the commissioner and such other factual data as the commissioner deems pertinent.

(G) A complainant shall provide to the board of revision all information or evidence within the complainant's knowledge or possession that affects the real property that is the subject of the complaint. A complainant who fails to provide such information or evidence is precluded from introducing it on appeal to the board of tax appeals or the court of common pleas, except that the board of tax appeals or court may admit and consider the evidence if the complainant shows good cause for the complainant's failure to provide the information or evidence to the board of revision.

(H) In case of the pendency of any proceeding in court based upon an alleged excessive, discriminatory, or illegal valuation or incorrect classification or determination, the taxpayer may tender to the treasurer an amount as taxes upon property computed upon the claimed valuation as set forth in the complaint to the court. The treasurer may accept the tender. If the tender is not accepted, no penalty shall be assessed because of the nonpayment of the full taxes assessed.

Amended by 129th General Assembly File No.141, HB 509, §1, eff. 9/28/2012.

Effective Date: 03-04-2002; 09-28-2006

## **5717.01 Appeal from county board of revision to board of tax appeals - procedure - hearing.**

An appeal from a decision of a county board of revision may be taken to the board of tax appeals within thirty days after notice of the decision of the county board of revision is mailed as provided in division (A) of section 5715.20 of the Revised Code. Such an appeal may be taken by the county auditor, the tax commissioner, or any board, legislative authority, public official, or taxpayer authorized by section 5715.19 of the Revised Code to file complaints against valuations or assessments with the auditor. Such appeal shall be taken by the filing of a notice of appeal, in person or by certified mail, express mail, facsimile transmission, electronic transmission, or by authorized delivery service, with the board of tax appeals and with the county board of revision. If notice of appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. If notice of appeal is filed by facsimile transmission or electronic transmission, the date and time the notice is received by the board shall be the date and time reflected on a timestamp provided by the board's electronic system, and the appeal shall be considered filed with the board on the date reflected on that timestamp. Any timestamp provided by another computer system or electronic submission device shall not affect the time and date the notice is received by the board. Upon receipt of such notice of appeal such county board of revision shall by certified mail notify all persons thereof who were parties to the proceeding before such county board of revision, and shall file proof of such notice with the board of tax appeals. The county board of revision shall thereupon certify to the board of tax appeals a transcript of the record of the proceedings of the county board of revision pertaining to the original complaint, and all evidence offered in connection therewith. Such appeal may be heard by the board of tax appeals at its offices in Columbus or in the county where the property is listed for taxation, or the board of tax appeals may cause its examiners to conduct such hearing and to report to it their findings for affirmation or rejection. An appeal may proceed pursuant to section 5703.021 of the Revised Code on the small claims docket if the appeal qualifies under that section.

The board of tax appeals may order the appeal to be heard on the record and the evidence certified to it by the county board of revision, or it may order the hearing of additional evidence, and it may make such investigation concerning the appeal as it deems proper.

Amended by 130th General Assembly File No. 37, HB 138, §1, eff. 10/11/2013.

Effective Date: 03-14-2003

A.P. 17