Ohio Supreme Court Decides Several Significant Cases Related to Real Property Taxation

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With the significant increase in appeals from the Ohio Board of Tax Appeals (BTA), discussed in an earlier article of this edition of *The Evaluator*, the Ohio Supreme Court has been extremely busy in the area of real property taxation. It is important to note, however, that all of the cases discussed below were filed with the Court in either 2013 or 2012. None of these decisions reflect the significant increase in 2014 appeals. 2015 promises to be a very active year for the Court in the area of real property taxation.

To summarize the trends we have observed, the Court has been increasingly willing to critically evaluate factual determinations made by the BTA and not only reverse those determinations, but take the next steps and make factual findings rather than remanding the matter to the BTA for such determinations to be made. Additionally, it has been clear that the Court believes that there is an affirmative burden on boards of education (BOE) appealing decisions of boards of revision (BOR) to establish a value for the property rather than trying to rely upon an original valuation by the auditor that has already been rejected by the BOR, of which the auditor is a member.

The summaries below are designed to provide a quick summary of the decision reached by the Court and may not fully develop all the nuances of the case. If you would like to discuss any of these decisions in more detail, please feel free to contact us.

***Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, Slip Opinion No. 2014-Ohio-4723. (October 28, 2014)**

Auction sale not provided presumption of validity, but can still be used to value the property where the facts demonstrate that it was voluntary and arm's length.

The Ohio Supreme Court affirmed the BTA's decision accepting an auction sale to value the subject property. The Court considered the interplay of R.C. 5713.03 and 5713.04 as it related to the use of an auction sale. The Court ultimately determined that there was not a total bar to the use of an auction sale, as the BOE had argued, but that that there was a higher burden placed upon the proponent of the auction sale to establish that it was, in fact, arm's length. In this case, the Court found that the record supported use of the sale. The Court noted that taxing authorities must presume that an auction sale price is not a voluntary, arm's-length transaction but that presumption may be rebutted by evidence that a particular sale was in fact voluntary and did occur at arm's length.

***Soyko Kulchystsky, LLC v. Cuyahoga Cty. Bd. of Revision,* Slip Opinion No. 2014-Ohio-4511. (October 14, 2014)**

Facts at time of filing, not based upon later developments, determine if complaint was a permissible second filing in the triennial period.

This case concerns whether the complaint filed by the property owner was an impermissible second filing during the triennial period and therefore should be dismissed. The sequence of the events is important. The property owner filed a 2010 complaint based upon a recent purchase. The BOR dismissed the 2010 complaint as the unauthorized practice of law (UPL) and the property owner appealed that case to the BTA. While the BTA case was still pending the property owner retained counsel and filed a 2011 complaint. The basis for the second complaint was that the arm's length sale that had not been considered in the previous case and that R.C. 5715.19(A)(3) allowed for the second complaint when the first was dismissed for UPL. Before the 2011 case as heard by the BOR, the BTA reversed the BOR dismissal of the 2010 case and that matter was remanded to the BOR. The BOR then held a hearing on the 2010 complaint and rejected the sale price. The BOR dismissed the 2011 case as a second filing because the sale was *subsequently* considered as part of the 2011 case. Both cases were appealed to the BTA. The BTA affirmed the dismissal of the 2011 case in March 2013 and the property owner appealed to the Court. In January 2014, the BTA accepted the sale price for 2010, but did not address 2011 because of the appeal.

The Court held that at the time the 2011 case was filed, the sale had not yet been considered by the BOR because the 2010 case was dismissed on UPL grounds. The Court found that the determination as to whether the complaint was jurisdictionally valid was determined at the time of filing (i.e., when the sale had not yet been considered) rather than subsequent events retroactively depriving the property owner of jurisdiction. Reliance upon R.C. 5715.19(A)(3) was therefore moot.

***Kohl's Illinois, Inc. Marion Cty. Bd. of Revision,* Slip Opinion No. 2014-Ohio-4353. (October 8, 2014)**

Filing provision in TIF agreement was not a statutory bar to jurisdiction rending the complaint void at filing, but rather a contractual provision that required beneficiaries of provision to pursue issued. Remanded to allow them to do so.

The Court reversed the decisions of the BOR and BTA dismissing the complaint filed by the property owner on the basis that the complaint was "void" because the property at issue was subject to a tax-increment-financing (TIF) agreement that contained a covenant prohibiting the filing of a complaint.

The Court held that any bar to the complaint that arises from the TIF agreement is not a jurisdictional restriction and that, as a result, the beneficiaries of the covenant had the burden to come forward and prove their entitlement to a dismissal of the complaint. Those persons are the county commissioners, a party to the TIF agreement, and the BOE, which received a financial accommodation through the TIF agreement. Because the beneficiaries did not step forward and shoulder the burden to prove their entitlement to a dismissal of Kohl's complaint, the Court vacated the BTA's decision and remanded for further proceedings at the BTA.

Kohl's was not a party to the original TIF agreement which contained the prohibition, but later acquired the property subject to the covenants which were recorded with the county recorder. The covenants were to be "enforceable by the County and School District against the Owner's successors and assigns." The "County" is the county commissioners under the TIF agreement.

In response to the Kohl's complaint the BOE filed a counter-complaint which stated that the "Owner is prohibited from contesting value by TIF agreement." The BOR dismissed and Kohl's appealed to the BTA. Kohls's waived hearing and filed a brief, but no other party appeared at the BTA. Kohl's argued that (1) the prohibition only applied to the first year or (2) provisions of the TIF agreement conflicted and such conflict should be resolved in Kohl's favor or (3) the prohibition was void as against public policy or unconstitutional.

The Court reasoned that the since the prohibition was not provided for by statute, it was not an absolute bar to jurisdiction. The complaint was therefore not void. In reviewing the case law, the Court notes that the instances where a BOR may dismiss a complaint are limited to those set forth in statute. The prohibition was, in fact, contractual. The Court held that,

> *"If the no-contest covenant is valid and binding under contract law or real-covenant law, it may constitute grounds for dismissal. But the beneficiaries of the covenant—the county commissioners and the BOE—had the obligation to come forward and shoulder the burden of advancing the covenant as a defense against the complaint. Kohl's was the appellant at the BTA, and neither the statutes nor the case law places on Kohl's the burden of establishing that the covenant did not bar its complaint."*

The Court noted that the failure of the commissioners or the BOE to appear at the BTA and defend the BOR's dismissal may be considered a waiver of the claim. The Court remanded the case to the BTA to allow the commissioners or BOE the opportunity to argue in support of the covenant.

***RNG Properties, Ltd. v. Summit Cty. Bd. of Revision,* Slip Opinion No. 2014-Ohio-4036. (September 23, 2014)**

Sale of some, but not all, of the parcels as issue and attempted reliance upon unauthenticated documents that did not set for the basis for an allocated purchase price led to reject of sale to value property.

The Ohio Supreme Court affirmed the decision of the BTA, which rejected the contractual allocation of a 2010 asset purchase price to determine property values for tax year 2008. The taxpayer had sold a large industrial warehouse business that included several parcels of real estate, and urged the BTA to adopt the

contractual allocation of the purchase price to certain properties that would then become the basis for the valuation of those parcels. The BTA rejected the allocation, holding that the submitted documents showed that the 2010 sale included some but not all of the parcels at issue as well as parcels that were not at issue. The court noted that the taxpayer presented a selective set of documents (HUD settlement statement, executed deeds) without offering witnesses to authenticate them and explain how the documents establish the values the taxpayer wished to apply. The court found that the BTA acted reasonably and lawfully when it declined to review the documents unaided by relevant testimony. In addition, the court determined that the taxpayer failed to discharge its burden to show the propriety of an allocated sales price. Here, the taxpayer relied on the Asset Purchase Agreement's allocation of total sales price, but the Agreement did not set forth any reasoning as to how the allocation was determined nor did it set forth an allocation at the level of individual parcels. Based on the foregoing, the contractual allocation was rejected.

This case involves a record that was poorly developed is likely more instructive to demonstrate the burden necessary to establish the value requested. It is likely to be advocated as a broader victory by BOE's seeking to combat the use to similar sales price. Property owners should pay attention to this case and the record developed before the BOR.

Worthington City Schools Bd. of Edn. v. Franklin County Bd. of Revision, **140 Ohio St.3d 248, 2014-Ohio-3620. (August 27, 2014) (request for reconsideration pending)**

BOR's acceptance of valuation testimony by knowledgeable employee of property owner shifted burden to BOE on appeal to the BTA. BOE could not rely upon auditor's valuation rejected by BOR. Court affirms BOR's acceptance of knowledgeable employee's testimony.

The subject property was a warehouse and office building located in Worthington, Ohio. The property owner filed a complaint seeking a reduction in value for tax year 2005. At the BOR, the property owner presented the testimony of an employee of the owner. The employee was a knowledgeable person, who obtained an MBA in real estate, after which he worked in the field of real estate investment, acquisitions and development. This knowledgeable employee testified to his opinion of value. Ultimately the BOR accepted the testimony and granted a reduction of value. The BOE then appealed to the BTA.

At the BTA, all parties waived hearing and submitted argument by brief, relying on the record developed before the BOR. The BOE argued that the evidence submitted below was analysis prepared and presented by counsel, and that the property owner did not appear, nor did an officer, member or shareholder of the owner, and that the only witness was an employee of the company that owned the property. In the BTA's decision, it declined to accept the employee's testimony in conjunction with the written presentation. The BTA regarded the employee as a fact witness who gave testimony to support the "owner's opinion of value". The property owner then appealed to the Supreme Court.

At the Court, the property owner asserted that (1) the BTA erred by reverting back to the auditor's original assessment by not making its own independent determination of value; (2) the BTA erred by not finding that competent, credible, and probative evidence was submitted at the BOR; and (3) the appellant must come forward and offer evidence which demonstrates the value sought.

The Court held that a qualified employee of the owner of real estate may give owner-opinion testimony. Additionally, the Court held that under the "Bedford Rule" when a BOR has reduced the value of the property based on the owner's evidence, the value has been held to eclipse the auditor's valuation (*Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 115 Ohio St.3d 449, 2007-Ohio-5237). In this case, the Court found that the BOE failed to oppose the owner's opinion of value or state the reasons why the BOR should not have adopted the valuation. Therefore, because the BOR accepted the owner's opinion of value, thus adopting a valuation different from the auditor, the burden shifted to the BOE to present evidence of value on appeal to the BTA. The Court then stated "since no new evidence was presented at the BTA, the BTA should have retained the BOR's valuation of the property." On September 8, 2014 the BOE filed a motion for reconsideration.

***L.J. Smith, Inc. v. Harrison Cty. Bd. of Revision,* 140 Ohio St.3d 114, 2014-Ohio-2872. (July 2, 2014)**

Property owner has the burden to establish that a complaint was actually filed and could not.

This case confronts the most basic jurisdictional question in real property tax cases: "Was a complaint actually filed with the BOR?" Ultimately, the Court held that there was no evidence that an actual complaint was filed, and the complainant had the burden to prove that a complaint was filed.

The property owner appealed decisions from the Harrison County BOR to the BTA. There was no transcript of proceedings from the BOR, and the only evidence that a complaint may have been filed was from three affidavits presented at the BTA. An informal meeting was held to discuss the valuation of the property, and the BOR issued decisions granting a reduction in value, which included information on how to appeal the decisions. The property owners appealed the decisions to the BTA, and ultimately after reviewing the affidavits and determining that there was no formal hearing at the BOR, or proof that an actual complaint was filed, the BTA found that under the presumption of regularity the appellant failed to file a complaint and remanded the case to the BOR with instructions to reinstate the auditor's original valuation. The Court analyzed the facts and affirmed the BTA's decision.

***Health Care REIT, Inc. v. Cuyahoga Cty. Bd. of Revision*, 140 Ohio St.3d 30, 2014-Ohio-2574. (June 18, 2014)**

Court re-affirms the reliance upon apartment comparables to value the real estate component of an assisted living property. Request for attorney's fees rejected.

The Supreme Court affirmed the BTA's decision and confirmed that it is appropriate to use apartment buildings in the sales comparison approach to distinguish the real property value from the ongoing business value for an assisted living property. The relevant tax lien date at issue was January 1, 2007. The property had sold in 2004 and was valued on lien date at the sale price of $8,740,000. The property owner retained an appraiser to appraise the property, and the appraiser prepared all three approaches to value (cost approach, sales comparison approach and income approach) and utilized apartment complex data and opined to a value of $3,100,000. The BOE retained another appraiser, but the appraiser did not utilize apartments as comparables and instead utilized sales of assisted living properties and arrived at a value of $5,400,000. The BTA rejected the 2004 sale price and found that property owner's opinion of value was more persuasive. The Court analyzed the propositions of law, but ultimately found that the BTA's decision was proper and stated that the Court's role is not to reevaluate evidence considered by the BTA. The Court

confirmed that utilizing apartment complex data is a valid method for valuing assisted living properties.

Additionally, the Court addressed the property owner's request for attorney fees based on its contention that the BOE's appeal was frivolous, as it was not well-grounded in fact or warranted by existing law or good-faith argument for the extension, modification or reversal of existing law. Ultimately, the Court quickly dismissed awarding attorney's fees because appeals from the BTA are as of right, and there was a basis for the appeal.

***Richman Properties, LLC v. Medina Cty. Bd. of Revision*, 139 Ohio St.3d 549, 2014-Ohio-2439. (June 11, 2014)**

Split of parcels after the purchase and before the tax lien date at issue resulted in rejection of the sale price to value the property. Representation by non-attorney officer at BTA hearing over county's objection was not reversible error.

This case involves the valuation of four parcels for the 2008 tax year. For the tax year, the county auditor valued the four parcels at a value of $468,470. The property owner filed a complaint, arguing before the BOR that the value should be $135,000 for all four parcels based upon a 2006 sale for that amount. The BOR rejected the sale price for the reason that the property had changed. At the time of the 2006 sale, the property was comprised of two parcels. As of tax lien date, the property had been subdivided into four parcels. Additionally, the property owner admitted to the BOR that it had subdivided the property hoping to enhance the value of the parcels. The BOR did grant a slight decrease in value to $383,180 to account for the fact that the improvements remained incomplete on tax lien date but denied the remainder of the requested decrease, noting that it had several comparable sales supporting the auditor's valuation.

On appeal to the BTA, the property owner again argued that the sale price was the best evidence of value. The BTA agreed. The BTA found that the sale was both recent and arm's length in nature. Thus, the sale was valid for valuation purposes. It found the aggregate value of the property to be $135,000 and ordered the matter remanded to the BOR to allocate the value among the four parcels.

The county appealed to the Supreme Court. The county first argued that the BTA's decision should be reversed because the property owner was represented at hearing by a non-attorney officer. The county maintained that the officer engaged in the unauthorized practice of law by making legal argument and cross-examining witnesses. According to the county, the BTA's willingness to allow the officer to proceed over the county's objections constituted error upon which the BTA's decision should be reversed. The Court agreed that some of the officer's actions "appear at times to have crossed the line * * * into the unauthorized practice of law." ¶25. However, the Court ruled that this did not constitute reversible error on appeal. The Court concluded that the county had the burden to show that the actions taken by the owner's officer at hearing rendered the BTA's decision itself unreasonable and unlawful. Here, the county failed to show that the officer's actions in anyway impacted the BTA's substantive decision.

The Court, however, did agree with the county's second contention of error that the 2006 sale could not be relied upon to determine value. The Court stated that, in determining whether a sale is recent for valuation purposes, the BTA must review all factors that would, by the passage of time, affect the value of the property. The Court concluded that the subdividing of the two parcels into four parcels after the sale constituted a factor that rebutted the recency of the sale to tax lien date. The Court further criticized the

BTA for acknowledging in its decision that the property had changed between the sale and lien date but then nevertheless ignored this substantive change. The Court also noted that the owner's own testimony showed that the owner expected the parcel split to increase the value of the property, negating the relevance of the sale. Finally, the Court found that the sale comparable evidence submitted by the county supported the higher valuation for the subdivided parcels. As a result, the Court remanded the matter to the BTA with orders to reinstate the BOR's higher value.

***Apple Group Ltd. v. Medina Cty. Bd. of Revision*, 139 Ohio St.3d 434, 2014-Ohio-2381. (June 10, 2014)**

Once owner's evidence refuted auditor's value, BTA was required to make independent valuation for initial year and balance of triennial under BTA's jurisdiction. While jurisdiction may continue for first year of following triennial, that was at the BOR.

This case involved the value of 13 residential lots that were improved for building but upon which no houses had yet been built. Before the BTA, the property owner had submitted an appraisal report that used the sales-comparison approach to value the parcels. The appraiser concluded that the lots were worth $85,000 each for tax year 2008 and $75,000 each for tax years 2009 and 2010. The BTA rejected the appraisal evidence and retained the auditor's original valuation $105,000 per lot. In addition, the BTA carried over the auditor's value to 2009 but declined the property owner's request to determine value for 2010. 2008 and 2009 were the last two years of the triennial.

The property owner appealed to the Supreme Court, arguing, first, that the BTA erred in retaining the auditor's value. The owner asserted the appraisal evidence it offered countered the auditor's value, thus triggering the BTA's duty to undertake an independent valuation of the property. The Court agreed. The Court stated that, while the owner had the initial burden to show a different value from that found by the auditor, once the owner submitted evidence negating the auditor's valuation through comparable sales that acknowledged a decrease in value within the subdivision over time, and that market conditions were in decline, the BTA was required to perform an independent valuation for the 2008 tax year. The Court thus determined that the matter should be remanded to the BTA for a decision based upon its independent review of the evidence.

The owner also argued that the BTA should have determined value for 2009 and 2010 under the carry-over provisions set forth in R.C. 5715.19(D). The Court agreed that the BTA had a duty to either carry its 2008 value over to 2009 or to determine a new value for 2009; however, the Court held that the BTA had no duty to find value for 2010. Under R.C. 5715.19(D), when a complaint regarding property tax valuations for a particular tax year is pending before the board of revision or the BTA, and remains unresolved during one or more succeeding years, the carry-over provision confers jurisdiction on the BTA to address any succeeding years that are within the same triennial as the tax year for which the complaint was originally filed. The BTA's carry-over jurisdiction allows the BTA to either carry over the value determined for the earlier year at issue or determine another value based on an independent review of evidence that argues against a carry-over. Since 2009 was in the same triennial period as 2008, the BTA had a duty upon remand to address the properties' values for 2009.

However, tax year 2010 was not in the same triennial period. As a result, the BTA was under no obligation to take jurisdiction over that year. The Court did state that there might be continuing jurisdiction over the 2010 before the BOR, but not before the BTA.

***Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 212, 2014-Ohio-1940. (May 15, 2014)**

Court partially granted motion for reconsideration. Burden still on BOE to prove value after auditor's value rejected by BOR, but previous decision of "bulk sale" valuation rejected and matter remanded for BTA to make independent determination of value.

On motion for reconsideration, the Supreme Court reconsidered its earlier decision in *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 193, wherein the Court held that it is the appellant BOE's burden to introduce evidence of value to rebut the BOR's new value. The Court granted, in part, the BOE's motion for reconsideration and concluded that the BTA was correct in rejecting East Bank Condominiums II, LLC's (the property owner) appraisal based upon a bulk-appraisal method, which was accepted by the BOR. However, the Court continued to hold that the BTA erred in reverting back to the auditor's original determination of value.

Facts and Background

The property owner filed a real property tax complaint with the BOR challenging the valuation of its 28 condominium units as of January 1, 2008, the tax lien date. The BOE filed a counter-complaint seeking to retain the auditor's valuation of the condominium units. The property owner presented appraisal evidence at the BOR. The appraisal utilized a bulk-appraisal method, whereby the appraiser viewed the condominiums as a "single economic unit." The BOE did not present any witnesses or evidence of value at the BOR. The BOR accepted the evidence presented by the property owner and granted the requested reduction in real property value.

The BOE appealed the BOR's decision to the BTA where it again did not present any evidence of value. The property owner once again presented its appraisal evidence that utilized a bulk-appraisal method. The BTA ultimately concluded that the property owner "failed to present competent and probative evidence" to support the requested reduction in real property value, citing *Bd. of Edn. of the Dublin City Schools v. Franklin Cty. Bd. of Revision* (July 24, 2012), BTA Nos. 2009-Q-1282 through 2009-Q-1408. As a result, the BTA reinstated the auditor's value. The BOE appealed and the Court reversed the BTA and adopted the value set forth in the property owner's appraisal because the appellant did not meet its burden of proof.

Supreme Court's Decision

The BOE filed a motion for reconsideration of the Court's earlier decision arguing that the Court erred by (1) holding that the BOE did not meet its burden of proof, (2) factually holding that the BOE did not produce evidence of value, and (3) accepting the property owner's appraisal, which utilized a bulk-appraisal method. The Court declined to reconsider all but the last assignment of error regarding the appraisal of the property.

The Court found that the property owner's appraisal that utilized a bulk-appraisal method violated R.C. 5311.11, which requires condominium units to be valued as separate parcels for purposes of taxation and assessment of real property. The Court distinguished its decision in *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62, which dealt with the single purchase of 44 condominium units. According to the Court, *Pingue* "merely supports the notion that the law favors the use of a sale price over competing

appraisal evidence." The Court went onto find that aside from being "legally impermissible," the property owner's appraisal was inconsistent with the factual record. The condominium units were never marketed as a single economic unit and a majority actually sold as individual units. Accordingly, the Court held that the BTA was correct in rejecting the property owner's appraisal report as it arrived at an "investment value, rather than real market value." The Court remanded the case back to the BTA so that it could perform an independent valuation of the subject property.

***James Navratil Development Company v. Medina Cty. Bd. of Revision,* 139 Ohio St.3d 183, 2014-Ohio-1931. (May 13, 2014)**

Listing of incorrect owner name on complaint did not render complaint jurisdictionally defective. Sufficient information was provided on the form.

The Court found that a BOR complaint was *not* jurisdictionally defective when it identified the incorrect owner of the property and the correct owner was later substituted.

James Navratil Development Company (JNDC) filed a complaint with the BOR incorrectly noting that the owner of the property was "James Navratil Company" rather than JNDC. The BOR identified JNDC as the complainant when it issued its hearing notices and decision. When JNDC appealed the BOR's decision to the BTA, however, the county auditor and the BOR moved for dismissal of the complaint because it contained the incorrect owner name. The BTA granted the motion, and the complaint was dismissed. JNDC appealed to the Ohio Supreme Court, and while that appeal was pending, the Court issued its decision in *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, (2013) 137 Ohio St.3d 266. In *Groveport*, the Court held that there was no jurisdictional requirement to correctly name the owner of the subject property on a complaint. Based on the *Groveport* decision, the Court reversed the BTA, holding that the failure to list JNDC on the complaint was not jurisdictional, and the substitution of a proper party is typically permitted when the substitution would cause no prejudice. The Court remanded the case to the BTA to be heard on the merits.

The Court specifically noted that this "24-month rule" was intended to be a new bright-line recency test to be applied in future cases with similar fact patterns. Because this rule was new and involved a shift in burden, the Court remanded the case to the BTA to allow the parties to submit additional evidence.

***Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 1, 2014-Ohio-853. (March 11, 2014)**

Evidence did not support that existing relationship caused the sale to be non-arm's length nor did it support allocation for personal property. Value from conveyance fee statement adopted.

In this case, the Supreme Court addressed a related party contention and the allocation between realty and non-realty components in the transaction. The Court held that although a relationship may exist between the parties, the relationship does not impact the arm's length nature of the transaction. The Court also found that there was no evidence of "corroborating indicia" of the value of the non-realty components.

Facts and Background

U-Store-It, L.P. (property owner) purchased three self-storage facilities in a single transaction in August of 2006. The properties also were the subject of a previous sale occurring in April of 2005. The sale contracts for both transactions separately stated the sale price for each facility. The Hilliard City Schools Board of Education and the South-Western City Schools Board of Education (BOEs) filed real property tax valuation complaints in relation to the properties located in their respective school districts, requesting that the 2006 sale prices be applied to the properties for tax year 2006. The BOR adopted the 2005 sale prices instead, finding that the 2006 sale was not arm's length. The BOEs appealed to the BTA. The BTA reversed the BOR and adopted the 2006 sale prices.

Supreme Court's Decision

The property owner appealed the BTA's decisions. The appeals were consolidated for argument and a single decision issued. Citing *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2009), 124 Ohio St.3d 27, the Court stated that "[t]ypically, a board of education makes a prima facie showing of value by presenting the conveyance-fee statement showing the sale and the price." It is then the opposing party's burden to show that the reported price on the conveyance-fee statement is incorrect. *FirstCal Indus.2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision* (2010), 125 Ohio St.3d 485. The Court found that despite an existing relationship, the evidence did not establish that the interests of the buyer and seller in the 2006 transaction were aligned. Furthermore, the evidence presented did not indicate that the sale prices included personal property. Therefore the Court held that the sale was arm's length and the prices evidenced on the conveyance-fee statement related solely to the real property.

***HIN L.L.C v. Cuyahoga Cty. Bd. of Revision*, 138 Ohio St.3d 223, 2014-Ohio-523. (February 20, 2014)**

Amendment to R.C. 5713.03 did not apply to open cases. Neither the lease nor the appraisal overcame use of sale closest to the tax lien date to value the property.

In this decision, the Supreme Court addressed whether a long-term lease encumbrance invalidates a recent arm's length sale. The property owner introduced appraisal evidence demonstrating that the fee simple value of the real property was less than the leased fee sale. The Court held that a recent arm's-length sale is the best evidence of value and found that the changes to R.C. 5713.03 did not apply to tax lien date January 1, 2006, and instead applied the substantive law in effect for the relevant valuation year.

Previous Decision

This property was before the Court previously for tax year 2004, wherein the Court determined that the arm's-length sale closest to lien date was the best evidence of value. The property sold in December 2003 for $4.9 million and in April 2004 for $7.4 million. Largely, the difference in the sale price was due to a long-term lease by a credit-worthy tenant. The property owner submitted an appraisal opining to a fee simple value of $5.0 million, along with additional testimony from appraisal experts regarding the difference between leased fee and fee simple. The BTA ultimately found that the April 2004 sale was both recent and arm's length, and therefore concluded that it was the best evidence of value for tax lien date.

Supreme Court's Decision

The property owner appealed the decision from the BTA, wherein the Court addressed whether the amended R.C. 5713.03 or R.C. 5713.03 effective for the relevant valuation year applied. Ultimately, the Court rejected the position that the amended R.C. 5713.03 should apply and found, as it has numerous times, that a recent arm's-length sale price established the value of the property. Furthermore, the Court held that neither the lease encumbrance nor the appraisal evidence invalidated the sale price.

***Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of* Revision, 138 Ohio St.3d 153, 2014-Ohio-104. (January 21, 2014)**

Current owner not required to notify prior owner of appeal to Court. BTA was not required to notify new owner of BTA hearing. The BTA's failure to address whether the sale was recent due to changes to property required a remand.

The property before the Court was a multi-tenant retail structure located in Mason. The former owner of the property filed a valuation complaint for 2008 seeking a reduction from the auditor's original value due to decreased profitability. The BOE filed a counter-complaint, noting that the property had sold in December 2006 slightly above the auditor's valuation.

The BOR reduced the valuation of the property due to the increase in vacancy at the property; finding that the sale was no longer recent. The BOE appealed to the BTA, and the former property owner (the original complainant) notified the BTA that it would not appeal because it had surrendered title to the property in lieu of foreclosure. The new owner was not provided notice by the BTA. The BTA found that the December 2006 sale was the best evidence of value for the property. In the BTA's decision it made no mention of the BOR's findings regarding recency of the sale, instead the BTA confined itself to the observation that the sale had occurred only 13 months before lien date, and therefore was close enough to be regarded as recent. The current owner of the property then appealed the decision to the Court.

At the Court, the BOE argued that the Court lacked jurisdiction because the current owner failed to serve the appeal on the prior owner. The Court held that serving a dispensable party is not a jurisdiction prerequisite, if it does not run to the core of procedural efficiency. Here, the Court stated that it is the current owner that has the primary and substantial interest in the valuation proceeding. Therefore, in this case joining the former owner of the property as an Appellee would be an act of futility.

The current owner asserted that the BTA was required to give notice to the current owner of the hearing. The Court analyzed this assignment of error and held that there is no provision of law that requires the BTA to give notice of its hearing to a new owner. Secondly, the current owner argued that the BTA erred by ignoring the BOR"s recency finding. In addressing this assignment of error, the Court found that the property record card, along with the auditor's statement at hearing, established that date and transfer price, the BTA has the authority to determine value unrestricted by the values claimed by the parties, but the BTA's failure to evaluate whether the sale was recent, necessitated remand for consideration of whether the sale was recent due to changes in the property from the date of sale to tax lien date.