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***Talawanda City School Dist. Bd. of Edn. v. Testa*, Slip Opinion No. 2015-Ohio-5450. (Dec. 30, 2015)**

The court reversed a Board of Tax Appeals (BTA) decision that denied a property tax exemption to a board of education (BOE) that leased a 34-acre parcel of property to a farmer. The BOE acquired 154 acres to build a new high school. Of the 154 acres approximately 34 acres was farmed pursuant to a lease agreement. The lease was $65 per acre per year and also contained an early termination clause at the election of the BOE. The tax commissioner granted an exemption for the entire property, with the exception of the 34 acres being farmed pursuant to lease. The commissioner's basis to deny the exemption was the pecuniary benefit realized by the farmer disqualified the land because that portion was not used for school purposes. The BTA agreed with the commissioner and affirmed the department's determination that the land should not be tax exempt because the district derived revenue from it through the lease to the farmer.

The unanimous decision, authored by Chief Justice Maureen O'Connor, found that a 2010 amendment to an 1837 law ended a restriction that exemptions are permitted only if the property is used for school purposes. This amendment removed the use restriction from R.C. 3313.44 and therefore a use restriction is not a requirement for property owned by a BOE from taxation.

***Snodgrass v. Testa*, Slip Opinion No. 2015-Ohio-5364. (Dec. 24, 2015)**

This case involved an attempt by the Pike County Auditor to assess personal property tax on property owned by the federal government at the Portsmouth Gaseous Diffusion Plant. The property was used by a private contractor operating the plant on behalf of the government. This private contractor never owned any of the assessed property and had no other assets. It is an entity created solely to manage the plant.

The auditor had assessed the private contractor under the theory that its use of the federally owned property was subject to Ohio's now-defunct personal property tax. The tax commissioner, on petition, cancelled the assessment. The commissioner found that a PILOT agreement, under which Pike County agreed to accept a payment in exchange for its agreement to release all claims for any property tax–real and personal–was binding. On appeal, the BTA affirmed the cancellation. The BTA not only found that the PILOT was binding but also determined that the contractor was neither a taxpayer nor a manufacturer for purposes of the tax.

Before the BTA, the contractor requested a finding that the auditor had acted in bad faith and in a frivolous manner when assessing after agreeing to the PILOT. The BTA did not rule on this issue, and the contractor filed an appeal to the Ohio Supreme Court. The auditor filed a cross-appeal, contesting the BTA's findings. The auditor also argued that the contractor lacked standing to file an appeal, given that it had prevailed on the merits below. The court found:

- The contractor did have standing as an aggrieved party to file an appeal with the Supreme Court, as it had requested a finding of bad faith and frivolous action but the BTA never ruled on the issue.
- Although the court had jurisdiction over the appeal, it concluded that the BTA lacks the authority to make a finding of bad faith and frivolous action because such authority is not set forth in statute. [Commentator's note: The court did not address whether the BTA's enforcement powers under R.C. 5703.031 would be broad enough to prevent such abuse arising during BTA proceedings].
- The Supreme Court also declined to exercise its own jurisdiction to make a finding of bad faith or frivolous conduct, commenting that "prudence counsels that we refrain from resolving issues that might more properly be addressed in another forum in a different proceeding." It is not clear to what other "forum" the court is referring.
- The auditor asserted that under R.C. 5711.31 the tax commissioner is limited to modifying the assessed value or making other factual adjustments and does not extend to cancellation of the assessment in its entirety. The court rejected this position, finding that R.C. 5711.31 explicitly confers authority to "make corrections to the assessment, as the commissioner finds proper," and the power to cancel an improper assessment constitutes a type of correction.
- Finally, the court found that the assessment was improper because it was made against an entity that did not qualify as a taxpayer for the personal property tax. The court affirmed that the contractor owned none of the property at issue. Rather, it was all owned by the federal government. The court stated: "When an assessment is not based on any property owned by the assessed entity, the assessed entity cannot as a matter of law qualify as a 'taxpayer' under the plain wording of R.C. 5711.01(B). It follows that the assessment was unlawful and that cancellation of it was proper."

***Megaland GP, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2015-Ohio-4918. (Dec. 3, 2015)**

This case concerns the ability of a local BOE to have a BTA appeal transferred to the board's regular docket when the property owner (taxpayer at issue) requests that it proceed under the BTA's small claims docket. The property owner, Megaland, appealed to the BTA from the Board of Revision's (BOR) dismissal of its complaint. On the prescribed form of the notice of appeal, Megaland marked "yes" in response to a question asking whether the case should be referred to the small-claims docket. Pursuant to the BTA's rules, the case was placed on the small-claims docket.

Under R.C. 5703.021(D), the BTA may reassign a case to the regular docket upon request if one of three criteria is met: 1) the request is from a party that is a taxpayer, 2) the appeal presents an issue of public or great general interest or presents a constitutional issue, or 3) the board determines that the appeal does not meet the requirements of for small claims. The BOE asked that the case be moved to the regular docket, arguing that it could make such a request as a taxpayer; but, the BTA denied the motion. The BOE appealed to the ourt, again arguing that it had the right to make the request as it was a taxpayer. The court found that the BTA's denial of the motion was proper because, under R.C. 5703.021(D), the transfer request must be made by "a party that is a taxpayer." The court concluded that the BOE could not claim that it is a taxpayer because "'a party that is a taxpayer' under R.C. 5703.021(D) means one whose standing as a party to the case before the BTA is predicated on the ownership of taxable property in the county under R.C. 5715.19(A)(1). Because the BOE's status as a party to these proceedings depends solely upon its having filed a counter-complaint before the BOR in its capacity as an affected BOE pursuant to R.C. 5715.19(B)."

The court further found that the BOE could appeal the denial of the transfer to the court. The BTA's denial was not an interim order because the BOE had a substantial right to participate in the appeal and that the BTA's order to keep the matter in small claims would foreclose any ability to appeal.

***Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2015-Ohio-4837. (Nov. 25, 2015)**

This is a case that reminds all to be careful to raise all issues before the BTA. This matter involved the tax-year-2010 valuation of three two-family residential rental properties in Columbus. The property owner had presented evidence of value before the BOR. The BOR did not accept the owner's evidence in full but granted a partial reduction from the auditor's original valuation based upon an unspecified sales-comparison and income approach, neither of which were included as part of the record. The BOE appealed to the BTA. None of the parties appeared at hearing or offered written argument. Upon review of the record, the BTA affirmed the reduction. On appeal to the Supreme Court, the BOE argued that the BTA should not have affirmed the reduced valuation when the evidence for the reduction was not in the record. The court, however, stated that the BOE had waived this argument because it had failed to advance it before the BTA. "The only thing that the BOE presented at the BTA was its notices of appeal as to the three properties, indicating its desire that the auditor's original valuation be reinstated." As a result, the court found that the BTA did not err is retaining the BOR's valuations.

***Steak 'n Shake, Inc. v. Warren Cty. Bd. of Revision,* Slip Opinion No. 2015-Ohio-4836. (Nov. 25, 2015)**

Steak 'n Shake filed a complaint seeking a reduction for tax year 2009 valuation of a Steak 'n Shake restaurant. The BOR retained the auditor's original valuation for the property. Steak 'n Shake appealed to the BTA. At the BTA hearing, the property owner presented an appraisal report and testimony from a state-certified appraiser, while the county presented an appraisal prepared by an employee of the county's valuation consultant. The BTA adopted the county's valuation. On appeal, the Supreme Court reversed.

Steak 'n Shake argued that the county's appraisal evidence should be rejected because, as it was offered by the county's mass-appraisal consultant, it lacked the independence necessary to qualify it as a competent expert opinion of value. The court denied this argument, stating that it was within the BTA's discretion as a fact-finder to determine whether the relationship of the witness to the county would bear upon the credibility of the witness.

The court, however, accepted Steak 'n Shake's second argument, that the BTA erred in its accepting the county's evidence which relied upon encumbered comparable properties in determining the value of the subject property, which is owner-occupied and not under lease. The court concluded that the county's appraisal "failed to adjust the sales prices of the comparable properties to remove the effect that long-term leases would have had on those prices." The court went on: "*Precisely because* the encumbrances [long-term leases] affect sale price, and *precisely because* the difference in sales price is a difference in value for tax purposes, was required to adjust the sale prices for his comparable properties to reflect the fact that the subject property was not encumbered and the county's witness would therefore likely sell for less."

The court further differentiated this case from its decision in *Meijer*, 122 Ohio St.3d 447, 2009-Ohio-3479, in which it accepted the use of unadjusted sale prices for encumbered properties to value an unencumbered, owner-occupied facility. The court stated that in *Meijer*, the BTA had not exclusively relied upon unadjusted unencumbered sales. Second, the court noted that *Meijer* employed what is known as the "special-purpose doctrine." Under this doctrine, the present use of a property may be considered when a building, in good condition, is being used currently and in the foreseeable future for the unique purpose for which it was built. In Meijer, the building was an outsized building adapted for Meijer's type of retail business. Steak 'n Shake's building, however, was of a configuration and size that readily saleable in the marketplace, not an improvement enhanced for the business operation being carried out. As such, it was necessary to adjust encumbered sales to reflect an unencumbered sale price for the property in the market.

***Sears, Roebuck & Co. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2015-Ohio-4522. (Nov. 3, 2015)**

The Ohio Supreme Court affirmed the decision of the BTA, which adopted the appraisal valuation of the taxpayer regarding the subject property consisting of an automobile service center and a mall department store on a single parcel. At the BTA, the BOE argued that there was no credible evidence in the record to support the taxpayer's appraisal methodology that valued both the automobile service center and the mall department store as a single economic unit. In affirming the BTA, the court noted that the appraiser advanced several grounds in support of her methodology while the BOE had not negated the valuation approaches by argument only. The BOE did not present any evidence of value at the BTA and elected only to challenge the evidence of the property owner via legal argument. Additionally, the court found that the contention that the mere presence of the two buildings on the same parcel did not make them an economic unit unavailing since the appraiser stated other reasons for viewing them as a single economic unit. The court held that the BTA was reasonable in concluding that the appraiser's opinion was supported by a viable theory of property value. The BOE also claimed error because the BTA failed to set forth findings of fact in its decision. However, the court has held that the BTA has no obligation to make particularized findings of fact and conclusions of law. The court did not address the BOE's "highest-and-best-use" argument because it was jurisdictionally barred because it was not set forth in its notice of appeal.

***Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 144 Ohio St.3d 128, 2015-Ohio-4304. (Oct. 20, 2015)**

A receiver filed a complaint in March 2009 identifying Platinum Lodging as the owner and itself as the complainant if not owner. The complainant's agent was attorney Clarence Mingo who was subsequently named county auditor later that year. The property is a high-rise hotel and water-park. In September 2010 the complaint was scheduled for hearing and a different attorney substituted as counsel for the complainant and the new owner at the time of the hearing. At the BOR, the complainant and current

owner presented fact witnesses and an appraiser. The fact witnesses discussed the operations and sale at $5,510,500 and the appraiser testified to her appraisal with a value of $6,800,000. The auditor's delegate indicated he would abstain from the vote but remained on the panel for administrative purposes. The BOR issued a decision in which the auditor's delegate participated, despite stating otherwise on the record, and found the sale price to be the best evidence of value.

Both the original complainant and the current property owners filed an appeal to the court of common pleas, which remanded the case to the BOR to address whether it was proper for the auditor's delegate to participate in the decision at the BOR. On remand, the BOR dismissed the complaint on grounds that the complainant lacked standing disregarding the direction of the Common Pleas court on remand. Thereafter, the BOE and then the taxpayers perfected appeals from the BOR's dismissal order to the BTA. The BTA dismissed the appeals on the grounds that because the first appeal had been filed in the common pleas court, the BTA lacked jurisdiction to entertain an appeal from the BOR's dismissal order. Although the BOE now contended that jurisdiction failed to vest in the court because the taxpayer failed to serve the subsequent owners as appellees, the court noted that when enforcing the statutory requirements for perfecting tax appeals, it avoided being hyper-technical and that here, counsel for the original complainant also appeared on behalf of the subsequent owners in these proceedings.

Ohio courts have held that when two parties in a case are represented by the same counsel, one party having received notice or knowledge in the case imputed constructive notice or knowledge to the other. As such, the defect did not divest the court of jurisdiction over the appeal. Second, while the general rule provided that once either a common pleas court or the BTA exercises jurisdiction over a matter, the other cannot interfere with that tribunal's authority, here, the subsequent-appeal rule did not apply since it would deprive the BOE of the statutory right to appeal to the BTA. Once the BOE appealed the BOR's dismissal to the BTA, Platinum ***had no alternative but to pursue its own appeal to the BTA***. Lastly, the court granted Platinum's request to reverse the BTA's dismissal of its appeal since the BOR lacked the authority to dismiss the case for lack of standing after the common pleas court ruled that there was standing. As such, the court remanded the case to the BOR with instructions to vacate its prior dismissal order and to determine the value of the property.

The Ohio Supreme Court reversed the decision of the BTA, and remanded the case to the BOR with instructions to vacate its previous dismissal order and proceed to determine the value of the property in accordance with the common pleas court's order. The court found that it was error for the BOR disregard the explicit instructions of the higher court (the common pleas court) on remand.

Holman Rentals L.L.C. v. Wood Cty. Bd. of Revision, **144 Ohio St.3d 125, 2014-Ohio-3820 (Sept. 23, 2015);** ***Queen v. Wood Cty. Bd. of Revision,*** **144 Ohio St.3d 127, 2014-Ohio-3821 (Sept. 23, 2015);** ***Chiow v. Wood Cty. Bd. of Revision,*** **144 Ohio St.3d 126, 2014-Ohio-3823 (Sept. 23, 2015)**

The above cases all involve the same issue. The court vacated the decisions of the BTA and remanded based upon its previous decision in *Ginter v. Auglaize Cty. Bd. of Revision*, 143 Ohio St. 3d 340, 2015-Ohio-257. The court in *Ginter* held that BORs do not have authority to dismiss a valuation complaint for failure to prosecute based on the complainant's failure to attend the scheduled hearing of the board. The court further stated that a board of revision has a statutory duty to make a determination of value whenever a complaint properly invokes its jurisdiction.

***Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2015-Ohio-3633 (September 9, 2015)**

The court affirmed the decision of the BTA based upon the BOR granting a reduction of the value. The subject property was an office-warehouse building and at the BOR the property owner presented an appraisal, which was accepted by the BOR. The BOE then appealed and made legal argument, but did not present any evidence of value at the BTA. The BTA issued a decision affirming the BOR. The BOE then appealed to the court and raised several assignments of error both criticizing the BTA's analysis and the appraisal evidence presented by the property owner. The BOE contended that the BTA issued a generic opinion that purported to resolve the appeal without any consideration of its unique facts and issues, the court stated "[w]e find that although the BTA decision is undeniably terse, and although its discussion of the evidence and the arguments probably falls short of the expository ideal to which the agency ought to aspire, the statements challenged by the BOE do not establish that the decision is unreasonable or unlawful."

The BOE also had issues with the BTA's usage of the term "subjective judgments" and felt that by using the term, the BTA's decision contradicted various aspects of the law relating to real property valuation. In addressing this assignment of error, the court held that the mistake of using the word "subjective" did not invalidate the BTA's decision. Instead, the appraisal report and testimony relied on objective data duly collected and evaluated in accordance with the expert witness's professional expertise.

The BOE also asserted assignments of error relating to the appraisal evidence relied upon by the BOR to find value. It asserted that the use of the tax additur in appraisal was improper. In addressing this assignment of error, the court determined that this was neither consequential nor clearly erroneous because reliance was placed primarily upon the sales comparison approach and the property was leased and on a gross basis.

The BOE also alleged that the dollar for dollar deduction to cure deferred maintenance was improper, however the court found that the deduction was factually supported and did not conflict with established appraisal practice or case law. As it relates to this finding, the court deferred to the BTA's fact finding and found that there was no legal error by the BTA.

***Ross v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2015-Ohio-3443 (August 28, 2015)**

The court vacated and remanded this case to the BTA for further proceedings in light of its decision in *Schwartz v. Cuyahoga Cty. Bd. of Revision*, 143 Ohio St.3d 496, 2015-Ohio-3431, which addressed a property in close proximity to the property at issue in this case. In this case, there was not a recent sale of the subject property, but instead the property owner submitted sales of similar properties in its neighborhood to support a reduction of value. In its original decision, the BTA found that the evidence submitted wasn't sufficient to support a reduction in value.

***Schwartz v. Cuyahoga Cty. Bd. of Revision*, 143 Ohio St.3d 496, 2015-Ohio-3431 (August 27, 2015)**

This case involves a dispute over the value of a two-family dwelling in Cuyahoga County. Schwartz purchased the property from the U.S. Department of Housing and Urban Development (HUD) Secretary for $5,000 in October 2011. The county fiscal officer valued the property at $126,800 for tax year 2011, and

Schwartz sought a reduction to $30,000. At the BOR, Schwartz did not appear, but was represented by counsel and presented testimony from a knowledgeable person regarding the 2011 sale and other sales in the neighborhood. The BOR retained the fiscal officer's valuation and the BTA affirmed.

Schwartz appealed to the court and argued that the BTA acted unreasonably and unlawfully by rejecting the 2011 sale price as the best evidence of the property's value, by assigning little weight to his comparable-sales data, and by failing to require the county fiscal officer and the BOR to introduce evidence supporting their $126,800 valuation.

The court found that the BTA erred by rejecting the 2011 HUD sale as evidence of value. In doing so, the court addressed the argument that R.C. 5713.04 does not prohibit the assessor from taxing a property sold at auction or in a forced sale for anything other than its true value. The court found that the record indicated the Schwartz rebutted the presumption that the sale was not arm's length with evidence that the property was on the market for three years. The court reversed the BTA and remanded the case with instructions that the $5,000 sale price be the property value for tax year 2011.

***Metamora Elevator Co. v. Fulton Cty. Bd. of Revision,* 143 Ohio St.3d 359, 2015-Ohio-2807 (July 15, 2015)**

The taxpayer filed a complaint with the BOR and contended that grain storage bins located on its property were improperly assessed by the county auditor as real property and should not be subject to tax, claiming that the storage bins are business fixtures. At the hearing before the BOR the owner presented testimony explaining that the bins are classified on the company's books as equipment items and due to the phase out of the personal property tax it was now important to obtain the proper classification of the storage bins. The storage bins were modular units of corrugated sheeting bolted down in concrete foundations which could be and sometimes were disassembled and reassembled. The BOR declined to grant an adjustment in value. The taxpayer then appealed to the BTA. The BTA determined that the storage bins were temporary structures and should be classified as personal property and reversed the BOR- relying upon the statutory definition of a business fixture as support for its decision. Fulton County then appealed the BTA's decision to the court asserting that the grain storage bins were realty. Upon review, the court noted that in 1992, the Ohio General Assembly added "business fixtures" as a category of personal property and specifically included storage bins in that category. As the Ohio General Assembly expressed its intent that business fixtures are personal property, the court found that storage bins are personal property not subject to real property tax.

***Ginter v. Auglaize Cty. Bd. of Revision*, 143 Ohio St.3d 340, 2015-Ohio-2571 (July 2, 2015)**

The Ginters filed a complaint challenging the valuation of their property for tax year 2012 and alleged that comparable market data supported the requested change in value. Additionally, the Ginters' attorney provided additional documentation regarding a transfer from (HUD) to the Ginters prior to the BOR hearing. The BOR scheduled the complaint for hearing and the Ginters nor anyone on their behalf appeared at hearing. The absence of the complainants or a representative of the complainants led to the dismissal of the complaint by the BOR. The Ginters then appealed to the BTA. The BOR and auditor sought an order affirming the dismissal of the complaint. The BTA concluded that the BOR improperly dismissed the complaint and reversed and directed the BOR to value the property in accordance with the HUD sale.

The court held that BORs do not have authority to dismiss a valuation complaint for failure to prosecute based on the complainant's failure to attend the scheduled hearing of the board and a BOR pursuant to statute must make a determination of value whenever a complaint properly invokes its jurisdiction. In its decision the court explicitly overturned *LCL Income Properties v. Rhodes,* 71 Ohio St.3d. In *LCL,* the court found the opposite of its holding in this case finding that the BTA's decision requiring the BOR to revalue every property complained of, even when the complainant does not appear at hearing was unreasonable.

The court found that the case should be remanded by the BOR to evaluate the evidence and determine value. The court also stated that because the BOR did not determine value and because such a determination by the BOR may affect the manner in which the BTA decides the case in the event of an appeal, it declined to review the BTA's determination of value.

***The City of Cincinnati v. Testa*, 143 Ohio St.3d 371, 2015-Ohio-1775 (May 14, 2015)**

A private golf course operator filed complaints against continued real property tax exemption on several public golf courses owned by the City of Cincinnati. The golf courses are exempt from real property taxation under R.C. 5709.08, as public property used for public purpose. While owned by the city, the golf courses are operated under a management contract by a private, for-profit contractor. The management contract provides for the city to pay the contractor a management fee and for the contractor to pay the city a certain percentage of food, beverage and merchandise sales. The city receives all golf course revenue, including greens fees and cart-rental fees. The tax commissioner granted the complaints and denied the exemptions. The tax commissioner found, among other things, the relationship between the city and the contractor was the functional equivalent of a lessor/lessee relationship, likening it to the court's decision in *Parma Hts. v. Wilkins*, 105 Ohio St.3d 463, 2005-Ohio-2818, wherein the court denied exemption for a municipally owned ice rink that the city leased to a private entity.

The BTA reversed the tax commissioner, distinguishing *Parma* based on the lack of a lease and stating that the exemption is benefiting the city and not the private entity. The court, affirmed the BTA, distinguishing its decisions in *Parma* and in *Cleveland v. Carney* (1961), 172 Ohio St. 189 (wherein the court denied exemption for a portion of a city-owned airport leased to private entities), and found that any private benefit was incidental to the public purpose of making the golf courses available to the general public. The court specifically disagreed with the tax commissioner with regard to the lessor/lessee relationship because the management contracts contained no language granting the right of possession or right to exclude others from the property, the contractor did not limit the city's access and supervision of the property, and the management contracts did not provide for rent or any other payment that functionally constituted compensation for a right to exercise possession.