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Abbreviations: "P/O" = Property Owner "BOE" = Board of Education
"BOR" = Board of Revision "BTA" = Board of Tax Appeals
"CAV" = Complaint Against Valuation "TY" = Tax Year

Lowe's Home Centers, Inc. v. Washington Cty. Bd. of Revision, 2016-Ohio-372 (February 4, 2016)

Facts: Auditor valued 142,446 sf Lowe's Home Center store at $9,091,000. At the BOR, P/O opined that the property was worth $3,600,000, but did not present an appraisal. BOR ruling: No change in value. At the BTA, competing appraisals are presented by the P/O and County Auditor. The P/O's appraisal concluded to $5,700,000 value (assuming that the property would be sold vacant). The County Auditor's appraisal concluded to $7,200,000 (assuming that the property would be sold subject to a lease). BTA ruling: $7,200,000. Lowe's appealed.

Supreme Court: Generally, adjustments need to be made to leased-fee sales when valuing properties that are not subject to a lease. If the property being valued falls within the definition of a Special Purpose property, then it may not be necessary to adjust the leased fee sales. Special Purpose properties are defined as "a limited market property with a unique physical design, special construction materials, or a layout restricts its utility to the use for which it was built." In determining whether a building meets that definition, consideration can be given to whether the building is brand new as of the tax lien date, how much it cost to build, whether it was put to use for the purpose that it was built for, and its size (if an exceedingly large structure, it may not be easily put to general commercial use). The Special Purpose Doctrine is meant to prevent an owner of a distinctive, but highly useful building from escaping full property tax because its sale would not attract many potential buyers.

Outcome: Case remanded to BTA to determine if the evidence justified applying the Special Purpose Doctrine.

Rite Aid of Ohio, Inc. v. Washington Cty. Bd. of Revision, 2016-Ohio-371 (February 4, 2016)

Facts: Auditor valued 11,052 sf Rite Aid drugstore & parking lot at $3,319,000. At the BOR, P/O expressed its opinion of value ($1,396,920), but did not present an appraisal. BOR ruling: No change in value. At the BTA, P/O's appraiser used general retail comps (not just drugstores), looking at stores in the nearby geographic area. He adjusted comps based on whether there was a lease in place. BOE's appraiser considered only drugstore comps found across a much wider area of Ohio. She did not make adjustments for leased fee sales. BTA adopted Rite Aid's appraisal value. BOE appealed.

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Supreme Court: Since a lease affects a property's sales price and value, it is necessary to adjust leased-fee sales in order to determine the value of the subject which is not subject to a lease. The Court notes that the rent in a build-to-suit lease often is above market, which will elevate its sales price. It observes that an 11,000 sf drugstore is not a likely candidate for special-purpose treatment (as compared to a 190,000 sf Meijer store).

Outcome: BTA ruling adopting P/O's appraisal value is affirmed.

Warrensville Hts. City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision, 2015-Ohio-78 (January 13, 2016)

Facts: The County Auditor valued Thistledown Racetrack at $14,264,000. Just prior to the tax year in issue, the owner filed a Chapter 11 bankruptcy petition and received permission to sell the racetrack at auction. In the 1st auction, the winning bidder agreed to pay $89,500,000, subject to a number of contingencies relating to video lottery terminals and rejection of a constitutional amendment prohibiting casinos in Ohio; that deal did not close. In a 2nd auction held just before the tax lien date, the racetrack sold for $43,000,000, subject to transfer of the racing license. BOE initiated a tax appeal to raise the property's value to $89,500,000 – the initial sales price. No appraisals were submitted. The BOR retained the Auditor's value. On appeal to the BTA, BOE now sought an increase to $43,000,000 – the winning bid in the 2nd auction. The P/O submitted an appraisal which broke down the $43,000,000 sale price into different asset categories (real estate, racing license and FFE). Relying on ORC 5713.04, the BTA rejected the $43,000,000 sales price as not being an arm's-length transaction, having been conducted under the supervision of the Bankruptcy Court. The BTA adopted the P/O's appraisal. BOE appealed.

Supreme Court: Court pointed to R.C. 5713.04 which provides that the sales price arrived at in an auction or forced sales does not establish a property's value for taxation purposes. A "forced sale" is a hurried sale by a debtor because of financial hardship or a creditor's action. The evidence in this case was that the bankruptcy sale was not only in the P/O's best interests but also the best interests of its creditors. However, the Court observed that this statute is not an absolute rejection of all auctions. The proponent can show that an auction has all the characteristics nevertheless of an arm's-length transaction between typically motivated parties and should in that case be regarded as the best evidence of the property's value. Here, BOE failed to provide any additional evidence to contest the P/O's appraisal, relying solely on the $43,000,000 sales price.

Outcome: BTA ruling adopting the P/O's appraisal value is affirmed.

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Columbus Cty. Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision, 146 Ohio St.3d 470 (March 2, 2016)

Facts: The P/O acquired this Comfort Inn property for $3,490,000, 2 years prior to the tax lien date. At the BOR hearing, the P/O submitted an appraisal opining to a $2,002,000 value. The appraiser's value was based upon the property's income stream declining continually over the past several years as well as the national recession. The BOR adopted the P/O's appraisal value, albeit with an adjustment (the BTA added back the intangible business value), arriving at a $2,531,000 valuation. BOE appealed to the BTA, which affirmed the BOR's decision finding that there had been a general market decline since the sale that occurred 2 years earlier. BOE appealed again.

Supreme Court: Evidence rebutting a sale price's prima facie indication of value may be contained in an appraisal report and presented in an appraiser's sworn testimony. There needs to be specific information bearing on the question of the recency, the arm's-length character, or the voluntariness of the sale. The Court noted not only the appraiser's testimony concerning the change in the economy and the significantly declining income achieved by the subject hotel, but also that the buyer paid too much given the hotel's ongoing performance at the time of sale – calling into question the arm's-length nature of the sale since the buyer did not act as a fully knowledgeable, typically motivated market participant.

Outcome: BTA decision affirmed.

Cannata v. Cuyahoga Cty. Bd. of Revision, 147 Ohio St.3d 129 (March 22, 2016)

Facts: Auditor valued a large, single-family residential property situated on 5 acres at $858,000. P/O had an appraiser testify at the BOR who presented his report concluding to $330,000 valuation. The BOR retained Auditor's value. P/O appealed to the BTA. In assembling the statutory record, the BOR failed to include the audio recording of the appraiser's direct testimony and cross-examination. Even without the audio recording, the BTA concluded that the appraiser's valuation constituted the best evidence of the property's value. The P/O actually filed 3 separate CAVs for each tax year in the same triennial period; the BOR dismissed the latter 2 CAVs since they did not fall within any of the 4 exceptions to the "one filing in a triennium rule" R.C. 5715.19(A)(2). The County Appellees and the BOE appealed.

Supreme Court: The BOR had a duty to maintain and transmit a transcript of the record which is to include all evidence offered at the BOR hearing; the County Appellees (the BOR and the County Auditor who serves as the BOR's Secretary) cannot use their own neglect as a basis for appealing the BTA's decision. However, BOE, which also appealed, is entitled to have the full record considered, as is the P/O. While the BTA is responsible for determining factual issues, the Supreme Court will not sustain the BTA's findings when there record does not contain "reliable and probative evidence" to support them. The evidence submitted here which called for a 62% reduction in property value necessitated close examination of the appraisal report and the supporting testimony from the appraiser. The Court also held that the filing of

a jurisdictionally defective 2nd or even 3rd CAV within the same triennial period does not cut off the "carry forward" effect of the decision on the 1st CAV. RC 5715.19(D).

Practice Note: The BTA could have heard "additional evidence", i.e., the appraiser re-creating his testimony, or remanded the case back to the BOR for a re-hearing.

Outcome: BTA decision vacated and case remanded for the BTA to develop a fuller record. The dissent would not have required remanding the case – saying that BOE's failure to object to the property owner's re-submitting the appraisal report to the BTA and its failure to impugn the appraisal report constituted a waiver of any objection to the BTA's making its decision solely on the written appraisal report.

Westerville City. Bd. of Edn. v. Franklin Cty. Bd. of Revision, 146 Ohio St.3d 412 (April 13, 2016)

Facts: County Auditor valued 3 undeveloped lots located near Hoover Reservoir at an aggregate value of $1,953,400. The BOR adopted the value suggested in the P/O's appraisal. BOE appealed to the BTA where it proffered the testimony on an appraiser who relied on the sale of a nearby lot which occurred 4 years prior to the tax lien date (as well as prior to the Great Recession). BOE's appraiser stated that values of higher-end residential lots had remained relatively stable notwithstanding the Great Recession. BOE also called the BTA's attention to the fact that the subject parcels were being marketed for sale at prices substantially higher than the Auditor's values. The BTA adopted BOE's higher value conclusion. P/O appealed.

Supreme Court: The Court previously held in *Akron City Sch. Dist. Bd. of Edn*, 139 Ohio St.3d 92, that a sale of a property more than 24 months prior to the tax lien date does not control over the County Auditor's more recent six-year reappraisal of the that same property. However, it now allowed a temporally distant sale to be used as a comparable for purposes of valuing a 2nd, (i.e., different) parcel, so long as the appraiser correctly adjusted for market changes that occurred over time. Thus, even when a sale is not presumed recent under the *Akron* doctrine, an appraiser may use it as a comparable when determining a different property's value. The BTA has discretion to consider temporally remote sales and that determining their probative value as adjusted by the appraiser lies within the BTA's fact finding discretion. Any time that an appraiser relies on comparables to value a property, it is necessary to evaluate whether the properties are, in fact, comparable, whether adjustments need to be made and the extent of the adjustments; it is necessary to know if the sale was a voluntary, arm's-length transaction. Verification with a party involved with the transaction is key. In this case, the P/O's appraiser did not verify any of the sales data for his comparables with a party to those transactions; in contrast, BOE's appraiser was able to verify 5 of the 6 sales he utilized.

Outcome: BTA decision affirmed.

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Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision, 2016-Ohio-7466 (October 27, 2016)

Facts: Auditor valued a recently constructed 240-unit apartment complex at $13,600,000. At the BOR hearing, the P/O presented a "restricted-use" appraisal report valuing the property at $9,338,000. Despite the property being only a few years old, the P/O's appraiser did not utilize the cost approach to value, maintaining that potential buyers would not consider the depreciated cost to construct the apartment complex to be meaningful in their decision-making process. While he developed the sales comparison approach, he used it mainly to come up with a capitalization rate as support for his income capitalization approach. The appraisal utilized the subject property's actual rental rates and expenses; the appraiser testified that documents in his work file and prior appraisals that he had done of other apartment complexes in the same marketing area supported his contention that the actual rentals and expenses reflected the market. Data about other apartment projects was not included in the report on account of its being "proprietary" according to the appraiser. The appraiser blended data from 2004, which was a lease-up period, with that from 2005, when the apartment complex was "stabilized". The BOR adopted the P/O's appraised value. BOE appealed, arguing that an appraisal report which failed to include relevant market data and specific adjustments is inherently unreliable and cannot be used to determine the property's value.

Supreme Court: Tax tribunals (the BORs and the BTA) are finders of fact, possessing wide discretion to weigh the evidence and determine its probative force. The Supreme Court is not a "Super BTA" or trier of fact *de novo* – it will only disturb a BTA decision with respect to valuation if it affirmatively appears from the record that such decision was unreasonable or unlawful. Here, BOE failed to demonstrate an abuse of discretion (i.e., an unreasonable, arbitrary, or unconscionable attitude). An appraiser's failure to comply with USPAP does not, in and of itself, bar tax tribunals from considering such evidence. ODOT Manual's prohibition against using restricted-use appraisals in regards to eminent domain proceedings does not constrain the use of such reports for property tax valuation purposes.

Outcome: BOR and BTA decisions affirmed.

Jefferson Industries Corp. v. Madison Cty. Bd. of Revision, 2016-Ohio-7089 (October 4, 2016)

Facts: 685,000 sf manufacturing plant/warehouse valued by Auditor at $34,500,000. The BOR considered the P/O's appraisal but only lowered value to $28,000,000. P/O appealed to BTA seeking to have the value lowered to $10,420,000 in line with its appraisal. At the BTA, BOE submitted its own appraisal supporting the BOR's $28,000,000 value decision. BTA affirmed and the P/O appealed.

Supreme Court: Use of the cost approach when 63% of the facility was built in the past 10 years is appropriate. Where there is conflicting evidence, the BTA must address important evidentiary conflicts before adopting an appraiser's opinion of value – this is necessary so that the Supreme Court may determine whether the BTA's decision is reasonable and lawful. Here, the BTA failed to resolve the significant differences in valuation techniques between the 2 appraisal reports as well as the P/O's appraiser's criticism of BOE's report. P/O objected to BOE's appraiser's (i) possible use of reproduction-cost analysis rather than Ohio-mandated replacement-cost analysis; (ii) erroneous warehouse-space characterization; (iii) per sf cost amount used; (iv) whether external obsolescence should be considered; and (v) whether BOE's sales comparables were appropriate. By not issuing its findings and the basis therefor, the reviewing court cannot determine if the BTA simply ignored or skipped-over the conflicting evidence.

Outcome: Case remanded to the BTA so that objections to BOE's appraisal can be resolved.

Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision, 147 Ohio St.3d 38 (May 18, 2016)

Facts: Auditor valued a 2-story office buildings at $2,205,000. The BOR adopted $1,000,000 value suggested in P/O's appraisal. BOE did not present its own appraisal evidence to the BTA. The BTA modified the BOR's decision by vacating the reduced value being carried-forward into the next year which was the beginning of the 6-year reappraisal cycle. BOE appealed to Supreme Court on theory that appraisal report presented at BOR was not probative.

Supreme Court: Under the *Bedford* rule (140 Ohio St.3d 248, 2014-Ohio-3620), once the Auditor's value has been shown to be incorrect and a lower value instituted based on the P/O's evidence, the burden of proof on appeal shifts to BOE. "[A]s long as the evidence of value that the owner presented to the BOR was competent and at least minimally plausible, BOE may not invoke the Auditor's original value as a default . . . The burden lies on BOE to prove a new value (be that the Auditor's valuation or some other value)." The Court rejects BOE's contention that the BTA decision must contain an explicit analysis of the appraisal report adopted by the BTA.

Note: The *Bedford* rule does not apply when the Auditor is the appellant before the BTA or if the BOR's determination was based on a sale of the subject property.

Outcome: BTA decision affirmed.

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Utt v. Lorain Cty. Bd. of Revision, 2016-Ohio-8402 (December 28, 2016)

Facts: Single-family residence was valued by the Auditor at $79,200. P/O filed a CAV seeking that the BOR lower the value to $20,000 (purchase price paid for the property 7 months prior to tax lien date). P/O sent the BOR copies of various documents relating to purchase of property as well as conveyance fee statement. Neither P/O, nor their attorney, attended the BOR hearing. The BOR acknowledged P/O's evidence, but retained Auditor's value due to P/O's absence. P/O appealed to BTA, but did not file brief or attend BTA hearing. BOR and Auditor presented expert testimony that Fannie Mae had owned property as result of a foreclosure and had sold it to P/O and that Fannie Mae hadn't acted as a "typically motivated" seller. BTA reversed the BOR's decision and adopted $20,000 as value because the BOR and Auditor hadn't disputed true value and expert didn't have first-hand knowledge of sale – only "general market commentary." The BOR and Auditor appealed.

Supreme Court: Even though the P/O satisfied its initial burden of showing that it had purchased the property in a recent arm's-length transaction, the BOR and Auditor successfully offered rebuttal evidence challenging the character of the purchase. Thus, the burden shifted back to the P/O to offer additional evidence to rebut the presumption. Here, the documents filed by the P/O were enough to satisfy the initial burden of showing that there was a recent arm's-length transaction; the P/O's absence at the hearing was irrelevant. However, the BOR and Auditor successfully rebutted the assumption of an arm's-length sale by demonstrating that the sale was a "forced sale" under R.C. 5713.04 because the property had been acquired by Fannie Mae for $54,000 in February and resold to the P/O 3 months later for only $20,000. Fannie Mae is typically an unmotivated seller and was insolvent at the time. Moreover, the expert witness was found to have exhibited extensive knowledge concerning a party to the sale (Fannie Mae) and, thus, provided much more in his testimony than mere "general market commentary" as the BTA had stated.

Outcome: BTA decision reversed and remanded with instructions to reinstate the BOR's valuation.

Emerson Network Power Energy Sys., N. Am., Inc. v. Lorain Cty. Bd. of Revision, 2016-Ohio-8392 (December 28, 2016)

Facts: Auditor valued an 89,400 sf unused office-warehouse property at $1,388,700 that had been constructed in 1948 and last updated in 1972, was in need of repair and contained asbestos. P/O unsuccessfully attempted to donate property over a year before tax lien date. P/O filed a CAV seeking a reduction to $400,000. P/O submitted draft purchase agreement to the BOR whereby a buyer would purchase property for $50,000. The BOR retained Auditor's valuation. P/O appealed to BTA. P/O submitted (mistakenly) submitted 2 different versions of the same appraisal report – one for $588,000 and the other for $450,000. Thus, P/O presented 2 theories of value to BTA: 1) requesting that BTA adopt $50,000 purchase price from draft agreement; or 2) requesting that BTA adopt the valuation of one of the

two versions of the appraisal report. After the BTA hearing, P/O submitted briefs stating that the property was sold for $50,000. However, the BTA did not consider the transfer evidence and issued a decision adopting the $450,000 appraisal valuation. P/O filed a motion for reconsideration and the BTA denied the motion. BOE also filed a motion for reconsideration requesting that the BTA adopt the higher of the two appraisal valuations. The BTA granted BOE's motion and adopted a valuation of $588,000.

Supreme Court: The BOR and BTA were correct in refusing to rely upon the draft purchase agreement alone to establish the property value. Moreover, the general rule is that new evidence may not be submitted to the BTA after a hearing. However, the BTA erred by not addressing the issues of *whether the new evidence that the property had been sold for $50,000 ought to be made part of the record*. The Court held that, under these particular circumstances, further proceedings to allow admission of the evidence were warranted. In addition, the BTA erred by not explaining why it relied on the $588,000 valuation rather than the $450,000 valuation. This constituted conflicting evidence that the BTA was required to address.

Outcome: BTA decisions vacated and remanded to BTA to consider post-hearing evidence and, if necessary, to justify reliance upon one appraisal valuation over the other.

Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision, 2016-Ohio-8375 (December 28, 2016)

Facts: Auditor valued 16 unsold units of a 20-unit condominium development at $5,986,400. The 16 units were appraised by the Auditor as separate parcels, but the P/O's appraiser appraised them as a single economic unit at $2,900,000 (or $180,000/unit). The BOR adopted P/O's appraisal. BOE appealed to BTA. At BTA hearing, BOE presented conveyance-fee statements of 4 condo units that were sold – sales ranged from $253,500 to $589,400 (price per sf greatly exceeding P/O's appraiser's). BTA found P/O's appraisal unreliable because appraiser had valued properties collectively as an apartment complex rather than as individual condominium units, which impermissibly discounted their value. Further, the P/O's appraiser's comparables were not comparable. Finally, the appraiser's failure to consider value under the cost approach given that construction was completed less than a year prior to tax lien date was improper.

Supreme Court: The law requires that condominium units be valued and assessed as units to be individually sold. R.C. 5311.11 precludes treating condominium parcels as an economic unit, thus creating an assemblage of parcels for tax-valuation purposes. The Court also held that the *Bedford* rule (which states that when the BOR has reduced the auditor's valuation based upon evidence submitted by the P/O, BOE may not rely on the auditor's valuation as a default) does not require adoption of the appraiser's valuation in this case because the BOR made a legal error in its determination.

Outcome: BTA decision vacated and remanded for an independent valuation whereby the BTA shall determine the value of each unit based on the sale price and any other evidence in the record.