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

2017 Ohio Supreme Court Round-Up[1]
Real Property Tax/Valuation Appeals

1. Johnston Coca-Cola Bottling Co. v. Hamilton County Bd. of Revision
Slip Opinion No. 2017-Ohio-870 (March 14, 2017)

Facts: Auditor valued a 426,229 sf Coca-Cola bottling and distribution center at $13,571,760 for TY 2011. P/O filed a CAV and submitted an appraisal report to the BOR valuing property at $6,800,000. Auditor's in-house appraiser critiqued P/O's appraisal. BOR ruling: No change in value. At the BTA, P/O presented testimony from a 2nd appraiser who submitted another appraisal – this one concluding to a value of $8,550,000. Auditor's in-house appraiser submits his own report concluding to a value of $14,000,000. BTA ruling: adopted the Auditor's new, higher appraisal value.

Supreme Court: In discussing one of the P/O's grounds for appealing, i.e., Auditor in-house appraiser's supposedly wrongful consideration of the property's "present use" when valuing the property – "present use valuation excludes, among other factors, location and speculative value, which comprise market value" - the Supreme Court found that while Article XII, Sect. 2 of the Ohio Constitution generally requires taxing authorities to ascertain the "exchange value" of a property, it "does not prohibit altogether any consideration of the present use of a property" in a proper case. Thus, the P/O's assignment of error was not well-taken. Interestingly, the Court mentions the "special purpose property" doctrine but avoids addressing whether the subject property is a special purpose property because the BTA did not adopt a present-use valuation (which is used when valuing special purpose properties). The Supreme Court also held that a county auditor's in-house appraiser should not be considered "inherently biased" – citing R.C. § 4763.12(A): "[a] person licensed or certified under this chapter may be retained *or employed* to act as a disinterested third party capable of rendering an unbiased valuation or analysis of real estate." The P/O in this case was unable to point to an actual bias on the in-house appraiser's part.

Outcome: BTA decision adopting County in-house appraiser's value affirmed.

2. Emerson v. Eric County Bd. of Revision
Slip Opinion No. 2017-Ohio-865 (March 14, 2017)

Facts: Auditor valued a 1.93-acre strip of vacant land (comprised of 2 parcels) at $328,270 for TY 2011. P/O filed a CAV requesting that the property value be set at $180,000 – the price paid

[1] Plus a couple of interesting Court of Appeals decisions.

for the land in September 2009 (15 months prior to the 2011 tax lien date). P/O proffered an appraisal report he had commissioned prior to purchasing property that valued the property at $170,000 (July 2009 value date – using sales that occurred between 2003 and 2006). BOR ruling: No change. The BOR questioned the arm's-length nature of the sale because P/O had purchased property from a pension fund trustee (who was his own brother). P/O appealed to BTA where his brother testified that there were impediments to developing this vacant land, so the pension fund sold property to his brother to recover the pension fund's investment. Auditor presented an appraisal valuing property at $283,000 (relying on 2010-2011 sales which were much more recent to the tax lien date at issue). BTA ruling: Adopted $180,000 sales price, finding that the P/O's appraisal (which concluded to a value lower than the actual purchase price) alleviated concerns about the close familial relationship.

Supreme Court: Given the version of ORC § 5713.03 then in effect, the only way to rebut a recent, arm's-length sale was to challenge whether the elements of recency and an arm's-length transaction were genuinely present. Supreme Court holds that the presumption against using sales between related parties can be overcome if the proponent affirmatively demonstrates that the price actually reflects fair market value in spite of the close relationship of the parties. The Court observes that because since one brother was acting in his capacity as a pension fund trustee, the sale could be considered as not occurring between brothers. The Court concludes that the appraisal report valuing the property at $170,000 supported a finding that the $180,000 purchase price represented fair value and that the sale was an arm's-length transaction. The recency element (which encompasses more than just the mere passage of time) was not challenged by the County at the BTA hearing and thus, not considered by the Court. Interestingly, there is no discussion about how dated the P/O's appraiser's sales comparable are and whether they unfairly suppressed the value conclusion. The BTA was correct in not considering the County's appraisal evidence (under prior version of ORC § 5713.03) once the P/O demonstrated that a recent, arm's-length transaction had occurred, so appraisal evidence attacking the sales price was not to be considered.

Outcome: BTA decision affirmed.

3. *Lutheran Social Servs. of Cent. Ohio Village Hous., Inc. v. Franklin Cty. Bd. of Revision*
Slip Opinion No. 2017-Ohio-900 (March 16, 2017)

Facts: P/O owned 2 apartment complexes: the first was a 44-unit complex on a 3.34-acre site, valued at $1,250,000 for TY 2008; and the second was a 46-unit complex on a 3.94-acre site, valued at $1,456,400 for the same tax year. Both constructed in early 2000s as federally subsidized housing developments. P/O submitted appraisals (relying upon significantly older sales and rent comps) concluding that the property's values should be set at $810,000 and $730,000, respectively. BOR ruling: No change in value. P/O appealed. In compiling the statutory transcript (record of all the papers and proceedings), the BOR's audio recording for the 2nd property was blank – thus, the BOR's rationale of rejecting 1 of the appraisal reports was missing from the case file. At the BTA hearing, BOE's expert witness criticized the 2 reports, but did not submit his own appraisals. BTA holding: Adopted P/O's appraisal reports, stating nothing more than a conclusory finding that the reports were probative; the BTA failed to explain its reasoning for overturning the BOR's rejection of the P/O's appraisals.

Supreme Court: The Court made 3 rulings: 1) The BTA must consider countervailing evidence before it adopts an appraiser's opinion of value. Here, the BTA failed to engage in sufficient discussion of the evidence; thus, the Court was unable to determine what facts it relied upon or whether the BTA had acted reasonably and lawfully. 2) The BTA should have exercised its power to either recover the missing hearing records (e.g., reaching out to the BOR to verify that the record cannot be located) or directing that the testimony be recreated – it was unreasonable for the BTA to adopt an appraisal where the negative appraisal review offered by the BOE's appraiser could not be considered. 3) The Court will defer to the finder of fact (BTA) in the weighing of evidence (and assessment of witness credibility) unless there is a legal error that makes consideration of such evidence inappropriate, i.e., use of the wrong legal standard.

Outcome: Remanded to BTA to give due consideration for the critique provided by the BOE's appraiser of the P/O's appraisals.

4. Dauch v. Erie Cty. Bd. of Revision
Slip Opinion No. 2017-Ohio-1412 (April 19, 2017)

Facts: P/O filed separate CAVs relating to 3 recently purchased properties. Case 1: Auditor valued property at $41,460 for TY 2013. P/O filed a CAV requesting a reduction to the $25,000 purchase price paid in November 2011. P/O waived his right to appear at the BOR hearing but submitted printouts from the County Auditor's web site and portions of the settlement statement. The conveyance-fee statement also appeared in the record – it's unclear who submitted this document. The facts in other 2 cases and the results were much the same. Supreme Court consolidated 3 cases into 1. BOR ruling: Auditor's values retained because no one with personal knowledge of the transaction testified about the conditions of the sales. BTA ruling: reversed – holding that the evidence was sufficient to show these were arm's-length transactions.

Supreme Court: The County Appellees complained that it was improper for the BTA to consider certain documents contained in the statutory transcript when it cannot be ascertained who presented those records. Noting that it is the duty of the County BOR (of which the Auditor is a member) to compile the statutory transcript, the Supreme Court held that the County Appellees cannot complain about the purported defects when they were responsible for preparing and certifying the statutory transcripts; thus, the conveyance fee statements were properly considered by the BTA. The Court also held that the P/O had met its relatively light burden of showing that the sales were recent and that they were at arm's-length (this light burden can be met by presenting certified copies of the recorded deed and conveyance fee statement, which is what school districts often do. We recommend nonetheless having a knowledgeable witness testify at the BOR hearing about the transaction, the aforementioned documents, the purchase contract, settlement statement and marketing materials as well). The BOR and Auditor did not present any evidence to rebut the evidence of arm's-length sales. Taxpayers are not required to appear at BOR hearings. The Supreme Court noted that the County Appellees/BOE are not powerless; they can use subpoena power to compel P/Os to appear before the BOR & BTA to be questioned about the circumstances of the underlying sale.

Outcome: BTA decisions affirmed – no evidence in support of other valuations was ever offered.

5. Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision **Slip Opinion No. 2017-Ohio-1428 (April 20, 2017)**

Facts: This case involves the current owner's attempt to vacate a BTA decision, alleging procedural irregularities.

Underlying case: P/O #1 filed CAV to reduce TY 2005 value from Auditor's $3,150,000 to $1,800,000, BOE countered to retain Auditor's value. BOR ruling: value lowered to $2,213,400. In March 2007, BOR mailed decision to P/O #1 and to its successor-in-interest (P/O #2) but failed to give contemporaneous notice to the BOE as required by ORC § 5715.20. In 2009, the property was sold to P/0 #3. In October 2011, shortly after learning for the 1st time of the BOR decision, the BOE filed an appeal, which the BTA favorably ruled upon in May 2012 restoring the original value. The BOE's Notice of Appeal listed P/O #3's lender as the property owner's address. BOE's brief was mailed to lender and did not mention P/O #3 in body of brief and suggested that P/O #1 still owned property. Notice of the filing of the appeal is only sent to P/O #1's attorney. BTA ruling: appeal was timely; reverses value reduction. Following the BTA decision, P/O #3 receives demand from the County in 2014 that $112,000 in taxes are owed for TY 2005 (repayment of the TY 2005 tax refund which was cancelled by virtue of the BTA's 2012 decision). P/O #3 moves to vacate the BTA's decision, which was denied, and P/O #3 appealed.

Supreme Court: The BOR/BTA lacks inherent authority to vacate a decision – even a void decision – once the 30-day timeframe to appeal that decision has lapsed; in contrast, courts can always recognize that the issued order was a nullity. The harshness of this rule may be tempered if the BOR/BTA failed to give notice of its order to a party entitled to receive the same, thereby tolling that party's time to appeal further. Since ORC § 5717.03(B) does not specify what address ought to be used, any address reasonably calculated to give notice to the owner is acceptable. Here, the BTA sending its decision to P/O #3's lender was sufficient, since that was the address given by P/O #3 as its tax mailing address. (Had the county/state been aware of a different, better address then the tax mailing address would not have been sufficient.) In this case, the BTA had no way of knowing that the tax mailing address was not the best address or that the lender would not forward the mailing to P/O #3.

Outcome: Denial of Motion to Vacate BTA Decision affirmed.

6. Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision, **Slip Opinion No. 2017-Ohio-2734 (May 11, 2017)**

Facts: Auditor valued 42 government-subsidized, low incoming housing parcels at an aggregate value of $4,456,910 for TY 2008 and $5,490,700 for TYs 2009 & 2010 (parcels were valued individually, combing a cost approach and a "gross rent multiplier". P/O had an appraisal done on property for TY 2008, which came in at $2,830,000. Appraiser identified 2 types of subsidy 0 low-income-housing tax credit ("LIHTC") and housing-assistance payments ("HAP"), saying that the property operated as an LIHTC, but only received HAP-level rents because tenants could not afford to pay LIHTC rents. BOR ruling: adopted appraiser's value for TY 2008 and reduced the aggregate for TYs 09 and 10 from $5,490,700 to $3,867,300. BTA ruling: reversed BOR's decision and reinstated Auditor's values for TY 08 and TYs 09 and 10, citing a rule from *Woda Ivy Glen*. P/O appealed.

Supreme Court: The Court discusses the 3 rules for valuing low-income house: 1) in applying the income approach (which appraiser did), market rents and expenses (as opposed to actual rents) are used; 2) subsidies should not be taken into account in a way that increases value; and 3) case law disfavors cost approach for valuing government subsidized housing, even newly constructed properties, because costs would be way too high without subsidies. The Court goes on to say that the BOE and BTA have misinterpreted *Woda* as requiring one income approach over the other. Actual-rent income approach is not absolutely required, and market-rent is not absolutely required either – although both should be considered. The appraisal in that case had not been vetted by taxing authorities and the Court simply ordered that the case be remanded to the BTA to be vetted. Thus, the BTA erred in its decision because it was operating as though *Woda* required that actual rent income and therefore, the Court ordered that the BOR's decision be reinstated under the *Bedford* Rule.

Outcome: Reversed – BOR decision/valuations reinstated.

7. Moskowitz v. Cuyahoga Bd. of Revision
Slip Opinion No. 2017-Ohio-4002 (May 30, 2017)

Facts: Auditor valued a 2-family residence at $148,800 for TY 2012. P/O filed a CAV to reduce value. At the hearing, the P/O testified about the general decline in property values throughout the county, and introduced photographs showing fire damage that occurred in 2000 (some 11 years earlier); P/O asks that the value be reduced to $25,000. While no appraisal report is offered, the P/O submits a table listing sales/values of other properties in the area. BOR sent a representative to property, who suggested that value be reduced to $47,800-$60,000 range. BOR ruling: value lowered to $60,000. P/O appealed to BTA, seeking further reduction to $25,000. BTA ruling: rejected P/O's evidence because he did not make adjustments reflecting differences between the subject property and his claimed comparables; BOR's $60,000 value affirmed. P/O appealed.

Supreme Court: P/O argued that once he had established that the original County Auditor value was wrong that the burden of proof shifted to county to establish the property's fair market value. This contention is rejected by the Supreme Court – case law unequivocally provides that "the burden is on the taxpayer to prove his right to a deduction . . . he is not entitled to the deduction claimed merely because no evidence is adduced contra his claim." P/O also argued that his opinion of value must be adopted because the BOR's decision proved flaws in the mass appraisal methodology valuation process used by the County in setting the original value. This argument failed because, once the BOR replaced the county's original value with the $60,000 figure, the P/O was no longer aggrieved by the county's original valuation – his appeal was limited to seeking an even lower value.

Outcome: Affirmed BTA's $60,000 valuation.

8. W. Carrollton City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision
Slip Opinion No. 2017-Ohio-4328 (June 20, 2017)

Facts: Auditor valued 2 vacant land parcels at an aggregate $578,100 for TY 2008. Land was sold to Carmax Auto Superstores for $5,850,000. BOE filed a CAV and was ultimately successfully having the TY 2008 value increased to sales price. After acquiring the property,

P/O built in 2008-2009 a 45,435-sf used car showroom. When TY 2011 rolled around, Auditor valued the improved property at only $4,716,690. BOE filed a CAV to increase land value to $5,850,000. BOR ruling: Auditor's value retained. At the BTA, BOE presented a stipulation and evidence that Carmax had spent $7,015,740 to construct improvements (2008/2009 construction costs) – and now sought a total value of $12,865,740. P/O had same appraiser from the TY 2008 case testify (but not submit an appraisal). Appraiser testified on behalf of P/O that land should be valued around $1,800,000 and that property was a special-purpose building. BOE did not submit any appraisal evidence at BOR or BTA (and record became sealed). BTA ruling: retained Auditor's value, making no mention of Carmax's costs in terms of valuing improvements. It rejected using the 2008 sales price to value the land because the sale occurred more than 2 years before the 2011 update valuation (see *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. BOE appealed.

Supreme Court: The Supreme Court does not stake its decision on the *Akron City School Dist.* case, supra, but looks at "recency" in a different way – saying that recency "encompasses all factors that would, by changing with the passage of time, affect the value of the property". This proves to be a 2nd line of defense for the P/O. ORC § 5713.03(B) bars the direct use of the land sale price because the improvements added to the property prior to the tax lien date defeat "recency". Thus, the BOE's reliance on the $5.85M sale of the land in 2008 was ill-conceived. Also, the BOE's argument that evidence in the record "affirmatively negates" the auditor's valuation as of 2011 and that the BTA should have performed an independent valuation of the property is flawed for the following reasons: 1) the sale took place 3 years prior to the tax lien date, it was taken into consideration by the Auditor as part of the triennial update process, and there was testimony by the P/O's appraiser that the land was worth much less than $5.85M; and 2) actual construction costs incurred by P/O do not negate the Auditor's valuation – the P/O may have overpaid for the improvements. The Court also holds that the BTA did not err by not applying the special purpose property doctrine here – that doctrine is applicable when the owner's currently successful use has been shown to be detrimental to the property's marketability, i.e., the property suffers built-in economic or functional obsolescence or is constructed with super adequacies that make it unattractive in the general market for that type of property; thus, it was not necessary to rely on *actual costs* as opposed to the county's cost schedules. Finally, the Court holds that the BTA had no duty to perform an independent investigation because neither party submitted credible evidence – so, it was justified in relying upon the Auditor's valuation.

Outcome: Affirmed.

9. Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision
Slip Opinion No. 2017-Ohio-4415 (June 22, 2017)

Facts: Auditor valued a 54,261-sf fitness center at $4,850,000 for TY 2013. BOE filed CAV to raise value to reflect February 2013 purchase price of $15,403,200. The P/O did not appear at the BOR hearing. BOR ruling: raised value to purchase price for TYs 2013 & 2014. P/O appealed to BTA. P/O presented appraiser testimony that the property was leased at an above-market rate ($11/sf market rate v. $22/sf lease rate) and since ORC § 5713.03 had recently been amended to require properties be valued as an unencumbered fee-simple estate, the subject property should be valued at only $7,055,000. BTA ruling: allowed appraisal into evidence but disregarded it and concluded to a $15,403,120 valuation for TY 2013 but held that it did not have jurisdiction to consider TY 2014.

Supreme Court: The Court first recognized that its 2005 decision in *Berea*, 106 Ohio St.3d 269, rejecting all appraisal evidence that posits a value different from a recent arm's-length sales price no longer applies to post-TY 2012 cases given recent statutory changes. The Court ruled that H.B. 487 amending ORC § 5713.03 could be applied to all post-TY 2012 cases (as opposed to waiting until the county's next triennial reappraisal/update year following TY 2012 – some counties will not go through the reappraisal/update process until 2015). The amendment specifies that "the true value of *the fee simple estate, as if unencumbered*" be used in determining market value; it also provides that the Auditor "may" consider the sales price of a recent arm's-length transaction to be the true market value of a property (replacing the previous term "shall"). While the best evidence of value may be the property's sales price, it is no longer the absolute determinate factor. The proponent of a different value bears the burden of proving a lower/higher value. The Court agreed with the P/O that the BTA had acted unlawfully and unreasonably in considering the sales price to be an irrebuttable presumption and by not addressing the P/O's appraisal and testimony that could have rebutted the sales price.

Outcome: Remanded to BTA to consider P/O's appraisal evidence.

10. Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision **Slip Opinion No. 2017-Ohio-5823 (July 18, 2017).**

Facts: Auditor assigned 18 residential condominium units an aggregate value of $1,066,000 for TY 2011. P/O filed a TY 2011 CAV, submitted evidence of 5 recent sales of other condo units in the same complex, and requested that the aggregate value by reduced to $882,000. While case was pending, P/O filed a CAV for TY 2012. BOR ruling: Adopted value of $882,000 for TY 2011 and dismissed TY 2012 CAV. BOE appealed to BTA. Only a portion of the BOR case record was transmitted to the BTA. Instead of performing its own independent investigation, the BTA merely adopted BOR's decision because there was no evidence in the record that countered the BOR's decision. Curiously, the BTA stated it was relying on the BOE's "written argument" but the case file was devoid of any filings submitted to the BTA. BTA ruling: Affirmed BOR's decision as to TY 2011 values and held that since the TY 2012 CAV was not "procedurally valid" that it did not cut off the carry forward effect of the decision as to the 2011 CAV. BOE appealed to Supreme Court.

Supreme Court: The BTA erred by relying on a presumption of validity of the BOR's decision rather than independently weighing the evidence. As there was not a full record for the BTA to analyze, it should have taken the steps to ensure that a full record was developed. And there was no error in the BOR considering additional evidence beyond that presented by the P/O – he BOR may elicit evidence from its own consultants and staff appraisers. The Court also held that the filing of the invalid TY 2012 CAV did not cut off the continuation of the TY 2011 CAV for TYs 2012-2013.

Outcome: BTA's decision vacated and remanded back to BTA.

11. Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision **Slip Opinion No. 2017-Ohio-7578 (September 14, 2017).**

Facts: Auditor valued subject property at $18,540,000 for TY 2011. P/O State Farm Insurance submitted an appraisal report concluding to $14,000,000 value for TY 2011 and $14,500,000 for

TY 2012. P/O sold subject property for $25,092,326 in sale-leaseback transaction in late 2013; the property was sold a 2nd time to a new owner in mid-2014 for $26,100,000 subject to the terms of the leaseback. BOE filed counter-CAV to raise value to one of the sale-leaseback prices. P/O argued that the sales were not arm's-length because P/O's (State Farm was now the lessee) high credit score added value to investors and because parties didn't act as typically motivated market participants. BOR ruling: Adopted $14,000,000 value for TYs 2011 and 2012. BOE appealed to BTA. BOE relied on conveyance-fee statements. P/O presented additional testimony, including that subject property was transferred as part of a larger sale/leaseback agreement that included 23 properties. BTA ruling: The BTA considered both sales. It found the late 2013 sale was a recent, arm's-length transaction for TY 2012, but that the 2014 sale was not "recent" in terms of the TY 2012 tax lien date. The BTA concluded to $14,000,000 value for TY 2011, and $25,092,330 for TY 2012. P/O appealed to Ohio Supreme Court.

Supreme Court: At the Supreme Court, the parties seem to have accepted the P/O's appraiser's value for TY 2011 and contested the TY 2012 value only. The P/O advanced 2 arguments: 1) that sale-leaseback transactions in general cannot be presumed to be arm's-length in nature given the parties' continuing relationship to each other in the leaseback part of the transaction; or 2) this particular transaction was not arm's-length in nature because the parties acted atypical of normal market participants. The BOE contended that sale-leaseback transactions are not arm's-length in nature only when the parties collude together to reduce the sale price and avoid certain costs and taxes. The Court agreed with the P/O that sale-leaseback transactions are not arm's-length in nature and noted that the "reciprocal interaction" is atypical of the kind of normal seller-to-buyer transactions understood to fix market values for tax purposes. The Court also cited various cases where sale-leasebacks were above and below market rate to demonstrate that BOE's contention was incorrect.

Outcome: BTA's decision was vacated and remanded to implement a value of $14,000,000 for TYs 2011 and 2012. Note: since the BOE never asked that the P/O's appraiser's higher value for TY 2012 be implemented, the Court consider such a claim abandoned.

12. NWD 300 Spring, L.L.C. v. Franklin Cty. Bd. of Revision
Slip Opinion No. 2017-Ohio-7579 (September 14, 2017).

Facts: North Bank Condominium enjoyed a tax abatement covering the building and site improvements; the land upon which the building sits remained taxable, with the unit owners each being responsible for their proportionate share of the taxes. The Auditor valued the 1.01 acres at $6,317,343 for TY 2013. A number of unit owners (collectively, "P/O") filed CAVs and the cases were consolidated. P/O's appraiser concluded to a value of $1,200,000. BOR ruling: retained Auditor's value. P/O appealed to BTA. BOE presented appraisal report concluding to $3,300,000 value – BOE's appraiser utilized mixed-use development comparables as opposed to the P/O's appraiser who only used sales of properties developed into apartments/condos. The BOE's appraiser opined that this site was better than being located in the downtown central business district. Both appraisers valued the land as if unimproved. BTA ruling: adopted BOE's $3.3M value because its appraiser's comparables (1) considered a wider range of potential development, (2) sold closer to the tax lien date, (3) were more comparable in size, (4) used a sf analysis instead of a per-unit or per-acre analysis (more appropriate given the 1-acre size of this parcel) and (5) made adjustments for dissimilarities.

Supreme Court: The Court once again stated that it will only disturb a BTA decision when it is unreasonable or unlawful. The standard for reviewing the BTA's determination of the credibility of witnesses and the weight to be given their testimony is abuse of discretion – the lower tribunal must have exhibited an arbitrary or unconscionable attitude. Here, the BTA did not abuse its discretion by adopting the BOE's appraisal value – there was no showing that the BOE's appraiser made legal errors or obvious factual mistakes or failed to apply professional judgment. The Court declined, therefore, to overrule the BTA's adoption of one professional's judgment and opinion over the other. Finally, the Court overruled P/O's contention that the BTA should have carried-forward the TY 2013 value to TY 2014 instead of remanding TY 2014 back to the BOR, - since this issue was not raised in the P/O's Notice of Appeal it would not be considered by the Court.

Outcome: BTA decision affirmed.

13. Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision
Slip Opinion No. 2017-Ohio-7650 (September 20, 2017).

Facts: The subject property consists of 2 parcels along the Ohio River suitable for loading and unloading liquid products for river transport. The subject property contains about 7.811 acres and is improved with a few small structures, some paving, five containment tanks, and moorings in the Ohio River. P/O purchased property close to tax lien date for $2.5M and allocated the bulk sale as follows: real estate ($210,000); containment tanks ($833,464); non-compete covenant ($12,500); and goodwill ($1,444,036). P/O only reported $1,043,460 sales price on conveyance fee statement (excluded non-compete and goodwill payments). Auditor valued subject property at $1,043,460. P/O filed a CAV seeking reduction to $210,000 (real estate value only). BOE filed counter CAV to retain Auditor's value. Auditor's appraiser testified that goodwill should be added to the realty allocation. BOR Ruling: retained Auditor's value. P/O and BOE appealed to BTA. BOE sought an increase to $1,666,536 (the $2.5M purchase price less value of containment tanks). P/O presented an appraisal report that concluded to a value of $430,000. BTA ruling: adopted BOE's $1,666,536 valuation.

Supreme Court: The Court held that the P/O did not satisfy its burden (being able to point to "corroborating indicia" in the record supporting the allocation) of showing a proper sale-price allocation for anything except the containment tanks. Further, there was no evidence of any intangible assets that could support the purchase contract's "goodwill" allocation, i.e., there was no going-concern or goodwill-type asset (examples: customer lists, executory contracts, etc.). Therefore, the Court refused to disturb the BTA's decision because it was not unlawful or unreasonable. Finally, the Court rejected the P/O's appraisal report because "it attempts to bypass the utility of the sale at issue by relying on the transfers of other properties rather than itself."

Outcome: BTA decision affirmed.

14. Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision
Slip Opinion No. 2017-Ohio-7664 (September 21, 2017)

Facts: In June 2011, P/O acquired this 37-acre Columbus, OH property as part of a $166 Million bulk-asset purchase that covered 33 facilities in multiple states. The Auditor's value was $1,825,700 for TY 2011. BOE's CAV sought to increase the value to the amount reported in

(original) conveyance fee statement - $8,492,911. P/O submitted a Counter-CAV at $1,921,084 and filed an amended deed and conveyance fee statement to correct the "purchase price erroneously noted on the original conveyance." P/O's property tax manager and 2 Ernest & Young staffers who had assisted in the allocation of value for the individual assets testified at the BOR hearing. BOR ruling: Increased value to $8,493,000 for TYs 2011-2013 but retained Auditor's $1,825,700 value for TY 2014 (offering no explanation why there was a near $7 Million diminution of value in 2014). P/O appealed to BTA. At BTA, P/O presented additional evidence including appraisal testimony. P/O's evidence suggested at least 4 different values: the values listed in the original and them the amended conveyance fee statements, the $1,445,000 appraisal value, and a $3,016,041 value shown on spreadsheet that was part of the transaction documents. BTA ruling: Affirmed BOR's value. P/O appealed to Supreme Court.

Supreme Court: In a bulk sale scenario, the best evidence of true value is the "proper allocation of the lump-sum purchase price" to individual parcels. Here, P/O's initial burden was to show that the original conveyance fee statement did not reflect the property's true value, then to establish what the true value is (presumably, the amended conveyance fee statement's value). In this case the BTA unreasonably and unlawfully failed to recognize (or even consider) whether the P/O had satisfied its initial burden of showing that the value listed on the original conveyance fee statement did not reflect the subject property's true value; the BTA was further criticized for disregarding the testimony of accounting firm employees who helped to value assets being purchased even though they were not earlier involved in negotiating the purchase price; as well as not independently determining the property's value after the initial conveyance statement was discredited. As to business records, the Court points out that Evid. R. 803(6) does not require a witness to have personal knowledge of the exact circumstances of a business record's creation or of the underlying transactions in order for the records to be admissible; but business records can be excluded or given little weight when the circumstances of their preparation lack trustworthiness.

Outcome: Reversed and remanded to BTA with instructions to determine the trust value of the subject property for TYs 2011-2013. Presumably, TY 2014 would be the subject of a later continuing complaint case.

15. Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision, Slip Opinion No. 2017-Ohio-8347 (October 31, 2017)

Facts: P/O owns a 16.3-acre parcel with approximately 50,000 sf office building, parking lots, driveways and a garage. P/O agreed to sell part of the property to Delaware County for $2,000,000 in December 2008 (contingent having property re-zoned from Farm Residential to commercial and creating a condominium). For TY 2009, Auditor valued the unsold parcel at $2,300,000. Individually, the parcels were valued as follows: $1,677,900 for the retained parcel; $622,100 for the later-conveyed parcel. The conveyed parcel was eventually sold in April 2009 for the agreed-upon $2,000,000. P/O filed a CAV requesting a reduction to $300,000 for the retained parcel ($2,300,000 - $2,000,000 = $300,000). BOR ruling: adopted P/O's value of $300,000. BTA ruling: reversed BOR holding and reinstated the Auditor's value because there was no evidence that property "recently" transferred through a qualifying sale and no appraisal report was presented. P/O appealed to Supreme Court.

Supreme Court: Court agreed with BTA that sale was not recent because "recency encompasses all factors that would, by changing with the passage of time, affect the value of the property." Here, the re-zoning and creation of a condo were significant enough factors to impact the value

of the property and therefore, because the changes occurred well after the TY 2009 tax lien date, the sale was no longer considered to be "recent" in a tax appeal. However, the BTA erred in reinstating the Auditor's valuation because the Auditor's allocation of value to the parcels was incorrect. The P/O conveyed 4.303 acres of the original 16.3 acres and retained only 11.997 acres (2.815 fewer acres than what the Auditor found). Thus, the retained parcel was overvalued by at least $272,086.64.

Outcome: Remanded back to BTA to independently determine the value of the retained parcel based on its correct acreage and value of any improvements situated on the retained parcel.

16. South-Western City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision, Slip Opinion No. 2017-Ohio-8384 (November 2, 2017)

Facts: Auditor valued a residential property at $113,300 for TY 2011. P/O filed a CAV for $57,000 and BOE filed Counter-CAV to retain Auditor's value. P/O presented a number of comparables at BOR hearing. P/O also testified that property brought in $850/month in rent. BOR ruling: After concluding that the P/O's comparables were very low and ultimately not true comparables, the BOR decided to reduce value to $65,000 by locating its own sales and income comparables and multiplying the rental rate by a gross rental multiplier. BOE appealed to BTA. One of the BOR hearing officers testified at BTA hearing as to how the BOR concluded to $65,000. The BOR didn't share its comparables or methodology with any of the parties and also didn't include those comparables and methodology in the record sent to the BTA. BTA ruling: despite admonishing the BOR for failing to meet it statutory duty of including evidence relied upon in reaching its decision as part of the statutory record, the BTA affirmed the BOR's decision. BOE filed appeal to Supreme Court.

Supreme Court: The Court held that the BTA failed to conduct an independent review of the evidence to determine the value of the property, erroneously deferred to the BOR and presumed the validity of its decision. The BTA failed to explain why it was persuaded by the P/O's evidence, it failed to address the BOE's substantive challenges to the BOR's application of the sales-comparison and income approaches, and it did not analyze the evidentiary weight of the BOR hearing officer's testimony absent her ability "to play math games" to show how the BOR arrived at its valuation. These failures prevented the Supreme Court from being able to confirm that the BTA discharged its role of independently judging the evidence.

Outcome: BTA's decision vacated and remanded to BTA.

17. Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision, Slip Opinion No. 2017-Ohio-8385 (November 2, 2017)

Facts: Auditor valued a vacant 22-acre parcel zoned for "planned residential district" and subject to a homeowners'-association agreement at $654,100. P/O filed a CAV and submitted an appraisal valuing the property at $580,000. The county submitted a study valuing the property at $530,000. BOR ruling: adopted P/O's appraiser's value of $580,000. BOE appealed to BTA. BTA ruling: affirmed BOR's decision. BOE appealed. Supreme Court remanded back to BTA to address (1) whether an appraisal valuing the property as encumbered for TY 2011 can be considered competent and probative evidence and (2) whether one of the tax commissioner's rules requires real property to be valued as encumbered for TY 11. BTA ruling: (1) P/O's appraisal

report properly supported his ultimate opinion of value, even if the deed restrictions on the property were not considered and (2) Ohio Adm. Code 5703-25-11(B) did not require real property to be valued as encumbered for TY 2011. BOE again appealed to Supreme Court.

Supreme Court: BOE's main argument was that P/O's appraiser valued the property as encumbered by private, voluntary deed restrictions in violation of *Muirfield Ass'n v. Franklin County Bd. of Revision*, 73 Ohio St.3d 710 (September 13, 1995). In *Muirfield*, a recreational parcel was owned by a homeowner's association and was subject to the rights of the homeowners embodied in deed restrictions. The *Muirfield* P/Os argued that it was essentially unsaleable and had a negligible value. The Court held that in valuing the parcel, the homeowners' easement and contractual rights should be disregarded and valued as an unencumbered fee-simple estate. Here, however, the Court held that this case differed from *Muirfield* (where the P/O's appraiser opined to a purely nominal value) because (i) only ½ of the property was encumbered, (2) instead of saying that it is unsaleable, the P/O's appraiser says the highest and best use is "holding for future development of site for single family use", and (3) P/O's appraiser's value was close to the median of his comparables as opposed to at the very low end – also, the Court noted that the appraiser here seemed to make very small downward adjustments for the encumbrances affecting ½ of this parcel.

Outcome: BTA acted lawfully and reasonably – decision affirmed.

18. Jakobovitch v. Cuyahoga Cty. Bd. of Revision, Slip Opinion No. 2017-Ohio-8818 (December 6, 2017)

Facts: P/O's single-family dwelling valued by fiscal officer at $1,429,100. P/O filed CAV seeking reduction to $850,000. P/O submitted a list of comparable properties and a 3-year old financing appraisal but did not have the appraiser testify at BOR hearing. BOR ruling: Retained fiscal officer's valuation, noting "lack of probative evidence". P/O appealed to BTA. BTA ruling: Retained fiscal officer's valuation and afforded no weight to P/O's appraisal, list of comparables or testimony (including that the property should be discounted due to installation of religious features on property). P/O appealed to Supreme Court.

Supreme Court: P/O raised value, procedural and constitutional arguments against the BTA's decision – none of which rose to the level of being "unlawful" or "unreasonable" to justify overturning the BTA's decision. The value-based arguments centered around the BTA disregarding a 3-year old financing appraisal report – the Court held that the BTA did not err in this regard because i) the report had been performed for financing purposes, ii) its valuation date was nearly 3 years prior to the tax lien date; and iii) the appraiser never testified. The P/O also argued that the fiscal officer did not justify the upward adjustments made by the county fiscal officer and its mass-appraisal system. In response to this issue, the Court held the P/O failed to satisfy her initial burden of presenting competent and probative evidence to impugn the Auditor's valuation**.** Long-standing rule in Ohio is that the Auditor/Fiscal Officer initially does not have to prove the accuracy of his valuation until the P/O presents competent evidence to challenge that value. As to the alleged procedural errors, the Court held that the BTA's duty is to value the subject property; there is no requirement that the BTA address "each and every argument raised against its conclusion".

Outcome: BTA decision affirmed.

19. Orange City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision, Slip Opinion No. 2017-Ohio-8817 (December 6, 2017).

Facts: The Auditor valued the subject property (a carwash) at $899,500 for TY 2012. BOE filed a CAV to raise value to $951,776 (the amount appearing on a conveyance fee statement from a February 2012 transfer from the lessor to the lessee). The purchase option showed $900,000 as the agreed upon purchase price, but, because P/O (then lessee) had fallen behind in rent, there had been an amendment to the lease that allowed for rent concessions that would be reimbursed either at the end of the lease term (in the final month) or if the P/O (lessee) exercised its option to purchase the property. Therefore, P/O argued that $900,000 was the price stipulated to in the purchase option it had with the lessor and that the additional $51,776 was past due rent and a net rent differential stemming from a lease amendment and that it should be considered a "non-realty item". BOR ruling: Adopted P/O's proposed $900,000 valuation. BOE appealed to BTA. BTA ruling: Held that, presumably because the past-due rent and net rent differential were included in the conveyance fee statement, the written term could not be varied by parol evidence. Thus, it reversed the BOR and adopted $951,776 as the value of the property. P/O appealed to Supreme Court.

Supreme Court: The major issue in this case was deciding whether to follow contract law (as the BTA had) or case law and statutes in determining which elements – i) purchase price, ii) past due rent, and iii) net rent differential – constituted part of the "sale price" for the purposes of determining the value of the subject property. Because there was a legal issue on appeal, the Court review the BTA's decision *de novo*. The Court analyzed the P/O's assertion that past due rent and net rent differential were "non-realty items". Even though both items were included in the conveyance fee statement, unlike contract law, the "question whether a given payment constitutes the "sale price" does not turn primarily on the contractual intent of the parties." Instead, the sales price consists of what a typically motivated buyer would pay a typically motivated seller as consideration for the transfer of title to the property. Here, the $51,776 in past due rent and net rent differential as analogous to buying the release of an obligation that the P/O accrued *as a lessee* and, therefore, closer to an intangible asset than a real estate asset.

Outcome: Reversed BTA and reinstated the BOR's valuation of $900,000.

20. Mann v. Cuyahoga Cty. Bd. of Revision, Slip Opinion No. 2017-Ohio-8820 (December 6, 2017)

Facts: This single-family residence was valued by the fiscal officer at $88,600 for TY 2013. P/O's CAV requested a reduction to $6,000. At the BOR hearing, P/O's attorney presented some sales comparables and opines (without firsthand knowledge) that property was in a very bad condition; he acknowledged that the property was purchased in a bank/HUD sale. BOR ruling: Retained fiscal officer's value. P/O appealed to BTA where a business associate familiar with the acquisition of the subject property testified. Witness stated that property was sold in late 2009 for $6,000 and then transferred again in 2010 for $0 in a non-arm's-length (related parties) transaction. The witness related that water damage which occurred in 2011 was not repaired until after the 2013 tax lien date; he admitted that 2 mortgages, totaling $45,000, were placed on the property. BTA ruling: Retained the fiscal officer's valuation because P/O did not adduce competent and probative evidence that the fiscal officer was wrong – the 2010 sale was too

remote and the no specific showing of how the water damage affected the property's value. P/O appealed to Supreme Court.

Supreme Court: P/O contended that he met his burden based *not* upon the 2010 transfer, but on the earlier 2009 transfer for $6,000 which the BTA ignored. The Court agreed and was critical of the BTA for disregarding the witness' testimony, the certified copy of the quitclaim deed included in the statutory record and the P/O's counsel's statements. Thus, because the record contradicts the BTA's finding, the Court held that the decision must be set aside and remanded to the BTA for it to consider the 2009 purchase in coming to a new decision. Even though this may have not been an arm's-length sale, the BTA still needs to consider the 2009 sale. The Court was critical of the BTA stating, "this is not a case that called for the BTA to search for the proverbial needle in a haystack. The record here is not voluminous, the sale was alluded to in [the witness'] testimony, and the deed memorializing this sale was included as an exhibit admitted by the BTA during its hearing."

Outcome: BTA decision vacated and remanded.

21. Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Edn., Slip Opinion No. 2017-Ohio-8843 (December 7, 2017)

Facts: Subject Property was involved in TY 2009 appeal where the value was set at $300,000. For TY 2011, Auditor set value of property at $1,550,000. P/O filed a CAV requesting a reduction again to $300,000. P/O's principals pointed to the decision in the TY 2009 case and also presented unadjusted sales comparables and testified that they had offered to sell the property to 9 different developers for the remaining cost of the mortgage ($700,000) without success. BOR ruling: Adopted P/O's $300,000 valuation. BOE appealed to BTA. BTA ruling: Reversed BOR and reinstated Auditor's $1,550,000 valuation, finding that the $300,000 was not supported by the record. P/O appealed to Supreme Court.

Supreme Court: The Court affirmed the BTA's decision to accord no weight to the evidence presented by P/O**;** the BOR's 2009 decision had no bearing on the property's value for a different tax year; the witnesses lacked the proper credentials to appraise the subject property using sales comparables (which actually were much closer to the Auditor's valuation than the P/O's), and testimony about unsuccessfully attempts to sell the property was not probative. The final issue was whether the BTA's decision violated the *Bedford* Rule – that rule provides that the BTA may not reverse a BOR decision and re-instate the Auditor's valuation when either party at the BOR hearing creditably challenged the Auditor's original valuation. Here, the Court held that the *Bedford* Rule was inapplicable since the BOR's ruling was completely unsupported by the record and the BOR committed a legal error, i.e., the Auditor's value was not proven to have been in error. Therefore, the BTA was within its right to re-instate the Auditor's valuation without the BOE having to proffer evidence in support of the Auditor's value.

Outcome: BTA's decision affirmed.

22. Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision, Slip Opinion No. 2017-Ohio-8844 (December 7, 2017)

Facts: P/O purchased the property for $26,000 in early 2010. Alonso Cruz's (whose exact title/relationship with the P/O is unclear, but who was identified in documents as either a signatory, manager or member of the company) name and signature appears on various purchase contract-related documents. P/O filed a CAV for TY 2010 requesting that the Auditor's $90,400 value be reduced to purchase price. P/O didn't appear at BOR hearing, but Cruz faxes documents to BOR with a cover letter referring to himself as "manager." BOR ruling: reduced property value for TY 2010, but determines value for TYs 2011-13 should be $83,300. BOE appealed to BTA. BOE served discovery requests seeking information about Cruz. P/O never responded, even after being compelled to respond and later sanctioned by BTA. BOE then filed a motion to dismiss on grounds that the P/O's CAV was filed by an individual lacking requisite authority. P/O failed to oppose motion and also did not attend BTA hearing. BTA ruling: denied unopposed request to dismiss and extended BOR decision by adopting purchase price for TYs 2010-2013. BOE appealed to Supreme Court.

Supreme Court: BOE again raised the issue that the CAV was jurisdictionally defective. The issue was whether the person who filed the CAV on the P/O's behalf fell within the class of people authorized by RC § 5715.19 to do so. Even the BTA, which scrutinized the CAV, determined that i) the signature was "unintelligible", and ii) Cruz's position with P/O was unclear. The Supreme Court held that the complainant has the burden of demonstrating that the BOR has jurisdiction to consider a tax appeal. The P/O did not do that here and, thus, the BTA should have dismissed the CAV.

Outcome: BTA's decision reversed and remanded to BTA with instructions to dismiss.

Dissent: Justice O'Neill noted that the record contained several references to Cruz having some sort relationship with the P/O, including his being its "manager"; such a relationship would permit Cruz to file a CAV on its behalf. Further, O'Neill critiqued the BOE for waiting 3 years to assert an apparent jurisdictional defect. And, although O'Neill strongly criticized the P/O's conduct of never responding to the BOE's discovery and never appearing at hearings as "unacceptable", he concluded that "this court should not condone the manufacture of a jurisdictional defect where there is none."

23. Warrensville Hts. City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision, Slip Opinion No. 2017-Ohio-8845 (December 7, 2017)

Facts: Same facts as **case #1 on Bluestone Law Group's Supreme Court 2016 case law update**. That earlier case related to the TY 2010 valuation; this case covers TY 2012. Fiscal Officer valued property at $38,049,500. Both BOE and P/O filed CAVs. BOE pointed to $43,000,000 purchase price (which, in the previous case, had been found to not be indicative of market value). P/O submitted an appraisal concluding to $16,300,000 value. BOR ruling: Reduced value of property to appraiser's $16,300,000 value. BOE appealed to BTA. BTA ruling: affirmed BOR's decision. BOE appealed to Supreme Court.

Supreme Court: BOE again argued that the July 2010 sale was a recent arm's-length transaction. Because the Court had previously determined that the 2010 sale was not an arm's-length sale,

the BOE was estopped from raising this issue again. The BOE's proposition that the P/O did not present evidence supporting an allocation of a portion of the sales price towards personal property was also rejected because once the sales price was determined to not be indicative of market value, then the allocation of personal property became irrelevant.

Outcome: BTA's decision affirmed.

24. Huber Hts. City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision, Slip Opinion No. 2017-Ohio-8819 (December 8, 2017)

Facts: P/O purchased subject property for $550,000 in June 2012. P/O subsequently added $200,000 in improvements. Auditor set the TY 2013 value at $2,199,700. P/O filed CAV and sent a copy of the closing statement to the BOR, but neither mails a copy to the BOE's counsel nor offers the document into evidence. At the BOR hearing, P/O only presents testimony of an employee who confirms sale price and date. BOR ruling: Lowers value to $1,282,740. BOE appeals to BTA requesting that BTA reinstate Auditor's original value. BTA ruling: adopts the sales price of $550,000. BOE appeals to Supreme Court.

Supreme Court: Even though the P/O did not seek to have the tax value set at the $550,000 sales price, the Court held that "irrespective of the values advocated by the parties, the BTA has an independent statutory duty to 'determine the taxable value of the property.'" And even though the P/O hadn't proffered the settlement statement at the BOR hearing, it was properly considered by the BTA because the documents had been made part of the statutory record compiled by the BOR and the BOE never objected to its being considered by the BTA, thereby waiving its right to challenge the document. (A property record card was also included in the record.) Once the P/O had met its burden of establishing the arm's-length sale (which was done with the minimum of evidence here), the burden shifted to the BOE which could have attacked the recency aspect by showing that the P/O made at least $200,000 of improvements between the purchase date and the tax lien date. While the amount spent on improvements was considerable, the BTA found that they did not materially change the property. While the BOE argued that information about those improvements was almost entirely within the P/O's purview, the Court points out that the BOE could have requested information through the discovery process which it failed to do. The bottom line is that the BOE failed to offer any rebuttal evidence to show that the BTA acted unreasonably and unlawfully in adopting the $550,000 sales price despite the improvements added to the property. **Comment**: Frankly, we would have expected a different result given the Supreme Court's recent decision in W*. Carrollton City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision* (Case #8 – Carmax).

Outcome: Affirmed BTA's decision.

25. Othman v. Bd. of Edn. of the Princeton City School District, Court of Appeals, First District, 2017-Ohio-9115 (December 20, 2017)

Facts: P/O sought to reduce the TY 2014 value of its property from $4,997,430 to $880,000. BOR maintained the Auditor's valuation. P/O appealed to the Hamilton Co. Common Pleas Court, not the BTA. P/O sought leave to introduce additional evidence, namely an appraisal report supporting its lower valuation claim, which request was denied by the court's magistrate. Objections to the magistrate's decision were raised, and while the judge overruled those

objections no party filed a judgment entry to memorialize the court's decision despite being so directed. The P/O then filed an appeal (the 1st appeal) with the Hamilton Co. Court of Appeals. At this stage, the case was remanded so that the Common Pleas Court could hear oral argument on the P/O's motion for reconsideration. At the hearing, the Common Pleas Court allowed the P/O to submit (i) evidence that the property sold in December 2016 for $950,000 and (ii) an appraisal report opining that its TY 2014 value was the same. The Common Pleas Court granted the motion for reconsideration and set the value at $950,000. The BOE then filed its own appeal (the 2nd appeal) to the Court of Appeals.

Court of Appeals: The decision by the Common Pleas Court to overrule the P/O's objections to the magistrate's recommendation was an interlocutory order, and, as such, that court had jurisdiction to reconsider it. The same holds true with respect to the earlier decision not to allow presentation of additional evidence. The sale, which occurred more than 24 months after the tax lien date, is not entitled to a presumption of "recency", however, it was not an abuse of discretion for the Common Pleas Court to have considered the sale.

Outcome: The outcome of this case turns on the procedural fact that the 1st Notice of Appeal was premature and, therefore, the Common Pleas Court retained jurisdiction to reconsider its earlier orders.