

# Publications

## Ohio Supreme Court Decisions & Developments

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### AUTHORED ARTICLE | Winter 2018

#### ***Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision, Slip Op. 2017-Ohio-8347 (Oct. 31, 2017)***

This case involves the valuation of a commercial condominium unit for tax year 2009. In April 2009, the property owner conveyed a portion of its property for \$2,000,000. The owner contended that the April 2009 sale price must be utilized to apportion the value between the two parcels. Essentially because the auditor valued the two parcels at a total value of \$2,300,000 for 2009, the retained parcel should be worth \$300,000 because the property that was sold, transferred at \$2,000,000. The BOR agreed with the property owner's position, but the BTA reversed finding that the retained parcel did not recently transfer and there was no competent evidence to support the value requested. On appeal the property owner argued that the property should be valued consistent with the recent sale. However, this is not a straight-forward application of 5713.03 because the property under appeal was the remainder and did not sell. At both the BOR and BTA there was also testimony regarding the rezoning and the creation of the condominium, which occurred after lien date. Ultimately the Court found that there was not a recent sale of the subject parcel. The Court remanded the case to the BTA for further consideration to determine the value of the remnant parcel based upon its correct acreage.

#### ***South-Western City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision, Slip Op. 2017-Ohio-8384 (Nov. 2, 2017)***

This case involved the valuation of a residential property in Columbus for tax year 2011. The owner filed a complaint seeking a reduction in value. At the BOR the owner presented comparable sales prepared by a real estate agent, who did not appear at hearing, along with testimony regarding relatives that rented the property from the owner. The BOR considered additional evidence based upon its own research after the hearing and granted a reduction from \$113,300 to \$65,000. The BOE appealed to the BTA. At the BTA the auditor's representative testified regarding how the BOR determined value, but did not provide specific documentation regarding the comparable sales and income analysis performed by the Board. The BTA affirmed the BOR's decision, but

admonished the BOR for failing to provide a record capable of being reviewed on appeal. The Court found that the BTA failed to properly perform its statutory duty to independently find value because it was unable to state the evidence it considered when determining value. The Court found that the deference to the BOR was improper because the BTA must independently weigh the evidence, and not merely recite what evidence was in the record. The case was remanded to the BTA.

***Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision, Slip Op. 2017-Ohio-8386 (Nov. 2, 2017)***

This case involved the valuation of vacant land for tax year 2011. The property was zoned planned residential district and is also subject to a homeowners' association agreement. The property owner sought a reduction in value and submitted an appraisal to support its request. The BOR granted a reduction to the appraisal. On appeal the BOE argued that the appraisal should be rejected because it didn't value the property as if unencumbered. The Court found that the appraiser used a proper approach to determine value based upon his highest and best use and that his value was reasonable based upon his comparable sales. The Court concluded that the BTA acted reasonably and lawfully by accepting the property owner's appraisal.

***Kinrear Road Redevelopment LLC v. Testa, Slip Op. 2017-Ohio-8816 (Dec. 6, 2017)***

This case involves the application of former R.C. 5709.87. The issue in this case was whether the property owner was entitled to an exemption for the increase in value of the real property that was subject to environmental cleanup. Here, the property owner cleaned up the property and after clean-up constructed an apartment complex. The Commissioner granted an exemption for the increase in value to the land, but did not grant exemption to the newly constructed improvements. The BTA held that the entire increase in value should be exempt because the newly constructed improvements were on the property when the Commissioner issued its order and were also listed on the tax duplicate for tax year 2013. The Court found that the exemption applied to both the increase in value of the land and improvements that existed after the remediation was completed and when the covenant not to sue was issued by the Ohio Environmental Protection Agency. The Court held that the statute was unambiguous and must be applied as written.

***Orange City School Dist. v. Cuyahoga Cty. Bd. of Revision, Slip Op. 2017-Ohio-8817 (Dec. 6, 2017)***

This case involved the valuation of a car wash that was subject to a recent sale. The Board of Education filed a complaint based upon a recent sale and requested the value recorded on the conveyance fee statement. The property owner presented evidence that the recorded sale price included two additional amounts that were paid at the time of transfer associated with accumulated rent obligations. The BOR issued a decision increasing the value of the property to the base sale price (the transfer less the additional amounts associated with previous rent obligations). The BOE appealed to the BTA wherein the BTA found that the entire purchase price should be utilized because of the express language in the purchase contract. The Court reversed the BTA's decision and held that a 'sale price' consists of those payments made by the purchaser to the seller that equates to what a typically motivated purchaser would pay to a typically motivated seller. The Court found that the evidence in the record supported that the base price for the sale of the property was \$900,000 and the additional amount paid was due to prior rent obligations.

***Jakobovitch v. Cuyahoga Cty. Bd. of Revision, Slip Op. 2017-Ohio-8818 (Dec. 6, 2017)***

This case involved the valuation of a single family residential home for tax year 2013. The property owner filed a complaint seeking a reduction in value and presented comparable sales and a 2010 financing appraisal at the BOR. The appraiser did not testify. The BOR retained the original valuation of the fiscal officer. The property owner appealed and the BTA found that the comparable sales and financing appraisal did not justify a reduction in value and that the property owner failed to meet her burden of proof. At the Court the property owner advanced several assignments of error, however, the Court affirmed the BTA finding that the BTA properly reviewed the evidence and determined that the evidence was not competent and probative to support a reduction in value. The property owner also advanced arguments regarding the fiscal officer's computer assisted mass appraisal system and other procedural arguments. The Court found that the county had no burden to defend its initial valuation because the property owner failed to establish value.

***Huber Heights City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision, Slip Op. 2017-Ohio-8819 (Dec. 6, 2017)***

This case involved the valuation of a retail property for tax year 2013. The property owner filed a complaint seeking a reduction in value for the subject property based upon its purchase and costs incurred of \$200,000 between its purchase in June 2012 and lien date January 1, 2013. The parties had previously settled the prior year case at a value of \$850,000. The owner requested a value of \$850,000, and the BOR granted a reduction from \$2,199,700 to \$1,282,740. The BOE appealed to the BTA. The BTA discharged its duty to independently find value and issued a decision consistent with the sale price of \$550,000. The Court affirmed the BTA and found that the BOE as appellant had the duty to rebut the sale. The BOE argued that the improvements to the property made the sale not recent to lien date, however the BTA found that the improvements did not substantially change the property. Ultimately the Court found that there was no legal error that would warrant overturning the BTA's decision.

***Mann v. Cuyahoga Cty. Bd. of Revision, Slip Op. 2017-Ohio-8820 (Dec. 6, 2017)***

This case involved the valuation of a residential property for tax year 2012. The property owner filed a complaint and submitted testimony at the BOR regarding comparable sales of properties. The BOR retained the original valuation. On appeal at the BTA, the owner submitted testimony regarding the transfer history of the property, including a November 2009 sale of the property for \$6,000 and a subsequent transfer at \$0 in March 2010. Additional evidence was submitted regarding mortgages encumbering the property. The BTA found that the owner failed to provide competent and probative evidence of value. The Court found that the BTA failed to discharge its duty because it did not address the November 2009 sale in its decision when the record contained evidence regarding the transfer. The Court remanded the case to the BTA to discharge its statutory duty.

***Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision, Slip Op. 2017-Ohio-8844 (Dec. 7, 2017)***

This valuation matter involves who is permitted to file a valuation complaint. A valuation complaint was filed by the property owner based upon a recent sale. Information regarding the sale was faxed to the BOR, but no one appeared. The BOR granted a reduction based upon the sale for tax year 2010, but retained its original value for 2011-2013. The BOE appealed, and the BOE issued discovery seeking to uncover the

relationship between the person who signed the complaint and the property owner, but no responses were received and the BTA granted a motion to compel. The BTA found that the sale should apply for tax years 2010-2013. The BOE appealed to the Court and argued that the original complaint was jurisdictionally defective because the owner failed to establish that the person who executed the complaint was authorized to do so. Jurisdictional sufficiency is a question of law that can be reviewed de novo. The Court found that it was improper for the BTA to find value when the complainant failed to establish it was authorized to file a complaint. The Court remanded the case to the BTA to dismiss the underlying complaint and found that the BTA erred when it found the signer was authorized to file, when he failed to clarify his relationship with the owner.

***Adams v. Testa*, Slip Op. 2017-Ohio-8853 “Adams I” and *Adams v. Testa*, Slip Op. 2017-Ohio-8854 “Adams II” (Dec. 7, 2017)**

In appeals before BTA, landowners sought to challenge current agricultural use values (CAUV) established by the tax commissioner on the basis that the values set for their woodlands were too high, in large part due to the clearing costs being too low. At the BTA the Board determined that it lacked jurisdiction because the journal entry was not a final determination that could be appealed and also found that the appellants failed to establish that the CAUV was set in violation of the rule-making procedures (finding that the entry was not a rule). The Court held that the journal entry is the last step in setting the CAUV and therefore it is a final determination under the plain language of the law. The Court rejected the landowner’s argument that the journal entries were illegal rules and that the rules regarding CAUV were unreasonable.

***Canton City School Dist. Bd. of Edn. v. Stark Cty. Bd. of Revision*, Slip Op. 2018-Ohio-1 (Jan. 2, 2018)**

This case involved the valuation of an apartment complex. The property was purchased after going into foreclosure. The property was set for a sheriff’s sale, but there were no bids. Thereafter, the receiver marketed the property for sale. The property eventually sold to a buyer with no relation to the seller. Typically, when a property sells at auction or in a forced sale, there is a rebuttable presumption that the sale price is not evidence of the property’s value, and the proponent of the sale price must present evidence that the sale occurred at arm’s length. In this case, the property owner testified regarding the sale. The BTA rejected the sale, and the Court reversed holding that the only evidence in the record demonstrated that the sale was at arm’s length, The case was remanded with the instruction that the property’s true value for the tax year at issue be set at the sale price.

***Notestine Manor, Inc. v. Logan Cty. Bd. of Revision, et al.*, Slip Op. 2018-Ohio-2 (Jan. 2, 2018) (request for reconsideration pending)**

The Ohio Supreme Court’s recent decision provides property owners with clarification about the approach for valuation of certain government subsidized low income housing. Most notably, the Court rejected the county’s interpretation of *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 12, 2017-Ohio-2734, 85 N.E.3d 694 (*Network Restorations III*) as requiring, in all circumstances, a market rent approach for valuing government subsidized low income housing. Instead, the Court stated that a market rent approach is not the only method of valuation for government subsidized low income housing and that a contract rent approach is an appropriate valuation method where those contract rents do not exceed generally available market rents.

The subject property in *Notestine* is an eleven unit residential rental property developed as low income housing under Section 202 of the Housing Act. As part of the Section 202 program administered by HUD, the property owner received a capital advance from HUD to construct the subject property. The Court highlighted the “overriding control” that HUD exercised over Notestine’s use of the subject property, including restrictions on tenancy and tenant income, restrictions on ownership of the property and transfer of any ownership interest, and restrictions on the rents. As part of the Section 202 program, HUD limits the rents paid by eligible tenants based on the tenant’s income and that the property owner may only collect restricted below-market rents. Furthermore, any rents received beyond the level set by HUD cannot be retained by the property owner and must be returned to HUD.

At the BTA, the property owner presented appraisal evidence that valued the subject property using a contract rent approach. The BTA adopted the property owner’s appraisal noting that government restrictions should be taken into account when valuing properties subject to those restrictions.

In affirming the decision of the BTA, the Court stated that the contract rents are appropriate when the rents do not exceed generally available market rents. The Court recognized that there is a preference for the market rent approach over the contract rent approach to value. The Court pointed out that the overarching message from is that the valuation method “must account for the ‘affirmative value’ of government subsidies.” The Court noted, however, that the Section 202 program rents were minimal and that there was no evidence that using market rent, rather than the Section 202 contract rents “would eliminate the ‘affirmative value’” of the Section 202 subsidies.

The County filed a motion for reconsideration, which is pending.

## BTA Decision on Remand from the Court

***Terraza 8 LLC v. Franklin Cty. Bd. of Revision (Nov. 8, 2017), BTA Case Nos. 2015-279, 280 (on remand from the Court, 2017-Ohio-4415)***

In the Court’s decision it makes it clear that a sale price no longer conclusively determines value for tax purposes. It remanded the case to the BTA for further consideration of the appraisal evidence presented by the taxpayer. On remand the BTA, the BTA acknowledged the recent arm’s length sale of the fitness center. The property owner argued that the sale was not reflective of the fee simple value for the property because it was encumbered by an above-market lease. There is discussion regarding whether the evidence submitted regarding the lease was sufficient, but ultimately the BTA found that there was evidence to establish that the property was encumbered by a lease at the time of sale. The BTA then evaluated whether the in place rent was at, above, or below market rent. The only evidence in the record was the property owner’s appraisal. In its decision the BTA addresses arguments regarding first generation sales and leases and determines that the sale is not reflective of the property’s fair market value on lien date. The Board further analyzed the appraisal and found that the testimony by the appraiser and the appraisal report were well-reasoned and supported and found value consistent with the only appraisal in the record.

The BOE appealed the decision to the 10<sup>th</sup> District Court of Appeals and the property owner filed a petition to transfer jurisdiction to the Supreme Court. The petition has not been ruled upon.