Ohio Senate
Finance Committee Hearing

Am. Sub H.B. 49 / Property Tax Budget Provisions

Sec. 5717.07. If the county auditor, tax commissioner, or any board, legislative authority, or public official appeals a decision of a county board of revision to the board of tax appeals, or appeals a decision of the board of tax appeals, a court of common pleas, or a court of appeals pursuant to this chapter regarding a decision by a county board of revision, and if the owner of the property that is the subject of the appeal is a party to the appeal and prevails in the proceeding, the county auditor, tax commissioner, board, legislative authority, or public official that appealed the decision shall pay the reasonable attorney's fees and court costs incurred by the property owner with respect to that appeal proceeding. If more than one such party appealed the determination, the attorney's fees and court costs shall be divided equally among those political subdivisions.

Date: June 1, 2017
Time: 11:00AM
Finance Hearing Room

Written Testimony of Mark H. Gillis

Introduction:

Thank you Chairman Oelslager and Finance Committee Members for allowing me the opportunity to testify regarding the property tax budget provisions of Am. Sub. House Bill 49. My name is Mark Gillis and I am here on behalf of the Coalition for Fair Taxation. The purpose of my testimony is to make sure the Committee is aware of the ramifications of the provision contained within Am. Sub. House Bill 49 which would create a lop-sided one-way loser pays system whereby only a public official/governmental body would have to pay the attorney's fees and court costs of an individual property owner if that body appeals a decision of a county board of revision and the property owner "prevails in the proceeding."

One-Way Loser Pays System:

Essentially, the proposed language of R.C. 5717.07 creates a lop-sided one-way "loser pays" system since if a property owner files an appeal and loses, the property owner does not have to pay the attorney fees or court costs of any other party.

One of the stated reasons for the inclusion of this provision is that governmental agencies have some sort of "home court advantage" at the County BOR level. This is simply not true.

Since 2008, more than 50,000 complaints have been filed by property owners seeking reductions in value in Franklin County alone. Over that same time period less than 10% of that number have been filed by Boards of Education seeking increases in value. There have been hundreds of millions of dollars more in valuation reductions granted over this time period than the amount of valuation increases granted. Therefore, it is quite clear that it is the property owner that has the "home court advantage" at the County level and the BOEs are simply trying to stem the bleeding.

Another justification that has been put forth is that because BOE's tend to file increase complaints that somehow, they are not being "fair." This too is not the case. It is quite clear that with 10 times as many reduction complaints being filed by property owners, that the filings by BOEs seeking increases in value only works to ***partially offset*** the massive amounts of reductions granted every year. It is also clear that the property owner representatives are very active in making sure that property owners who are entitled to reductions file complaints to receive them. If they weren't there wouldn't be such a large discrepancy between the numbers of increase and decrease complaints being filed.

The Proposed Language of R.C. 5717.07 is Vague.

What Does "Prevail" Mean?

The provision in Am. Sub. H.B 49 permits the lop-sided one-way loser pays system if the property owner "prevails in the proceeding," however there is no definition of the word "prevail" in the statute.

If a property owner files a complaint seeking a reduction in value of their property and the BOR grants the reduction, but on an appeal to the BTA or beyond, the value is determined to be higher than the BOR's value, but still lower than the Auditor's original value; which party "prevailed"? Did the official/government body who appealed the initial reduction prevail because the original reduction was lessened or did the property owner prevail because they still got some reduction?

Do Not Lose Sight of the Entire Valuation Challenge Process:

Boards of Education are Currently Prevented from Thoroughly Investigating Property Values at the County Level:

There is no discovery power at the County Board of Revision level. As a result, a Board of Education is at a distinct disadvantage before boards of revision because they cannot require a property owner to allow the BOE's appraiser to enter and inspect the subject property or require the property owner to produce any relevant documents. In other words, the property owner holds all of the cards at the County level.

This fact is well known by attorneys practicing on behalf of property owners and the majority of them consistently refuse to permit a BOE appraiser to enter and inspect the property and fail to even respond to informal document requests.

It is only on appeal to the BTA where ***for the first time a board of education can require the production of relevant documents and obtain an inspection of the property involved.*** The current provision would severely hamper a BOE's ability to determine the true value of real property and therefore hinder the BOE's ability to protect its current tax duplicate. This provision would also create further incentive for property owners and their contingent fee attorneys to refuse to cooperate at the County level.

Incentive to withhold information:

A perfect example of the incentive to withhold information was revealed in the BTA's decision in *Columbus City Sch. Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Aug. 9, 2011), BTA No. 2008-A-947 (attached hereto).

In *SNH*, the property owner filed a complaint seeking a reduction in value from $16,050,000 to $3,593,500 based upon a purported sale of the property for that amount. At the BOR hearing, the property owner did not appear, but was represented by its contingent fee

counsel who presented a conveyance fee statement and deed in support of the claim that the entire property sold for $3,593,500. Despite the lack of a single witness to testify regarding the sale, the BOR nevertheless accepted the reported sale price and lowered the value by $12,456,500 or 77%.

Without any method by which to gather information regarding this sale at the County level, the BOE's only recourse was to appeal the BOR decision to the BTA and obtain relevant documents in discovery. It was solely due to the appeal to the BTA that it was revealed that the sale upon which the owner was relying was actually a sale of only the underlying land and did not include the recently constructed multi-million dollar building.

The BTA found that "based upon the terms of the purchase and sale agreement, as amplified by the amended and restated ground lease, this board concludes that the sale of the subject property on or about June 7, 2004, ***included only the subject land***." The BTA proceeded to use the sale price to value only the land and reinstated the Auditor's original building value which resulted in the total value being set at $18,272,480, an increase of $2.2 million over the Auditor's original value.

Under the current provision, it is quite likely that the appeal to the BTA in *SNH* would never have been filed and the property owner would have received a massive and *unjustified* value reduction resulting in a ***tax increase for all other property owners*** in future years.

<u>Contingent Fee Arrangements</u>: The Majority of Attorneys Representing Property Owners are Paid on a Contingent Fee Basis.

Under the proposed language of R.C. 5717.07, it is likely that the appeal in *SNH* would never have been filed because the property owner's attorney in that case was paid on a contingent fee basis. These contingent fee arrangements typically call for the attorney's "fee" to be a portion of the "tax savings" for one or more tax years (typically 50%). Therefore, the potential "attorney's fees" in the *SNH* could have exceeded $200,000. Of course, the property owner wasn't paying this potential fee out of its own pocket, but rather only if the large and *unjustified* reduction was granted. In *SNH*, the property owner and its attorney had every incentive to withhold the true nature of the sale to maximize the potential value reduction and thereby the potential contingent fee.

There has been some discussion that there are BOE attorneys who are also paid on a contingent fee. While I cannot speak for all BOE attorneys out there, I am unaware of any that work on a contingent fee arrangement and our rates have been hourly for nearly 40 years.

Alternative Measures:

1. **Prohibit Contingent Fee Arrangements:**

One alternative to creating a lop-sided one-way loser pays system would be to simply prohibit all contingent fee arrangements before county Boards of Revision and the Ohio Board of Tax Appeals. This would likely have caused the original reduction complaint in *SNH* to not be filed in the first place because the property owner's attorney would have more incentive to properly vet the facts of the case before proceeding.

2. **Eliminate Taxpayer Complaints on Other Taxpayer's Property**:

Occasionally, a private property owner will initiate a property valuation complaint against a fellow private property owner. This has been cited as a reason to limit who can file BOR complaints against property they do not own. One alternative would be to simply prohibit such individuals from filing valuation appeals against property they do not own, but still permit governmental agencies to file complaints since their budgets and critical local funding are dependent upon receiving revenue under current levies.

3. **Require Boards of Education to Set Filing Parameters**:

In order to increase public accountability and transparency for decisions regarding valuation challenges, BOEs could be required to pass a resolution outlining the specific parameters under which they intend to file property valuation complaints. Parameters could include:

1) the type and class of property, (i.e. commercial, industrial, residential, agricultural, etc); and/or

2) minimum thresholds, such as a sales price threshold or a value difference threshold.

For example, a BOE could resolve to challenge only sales above a certain price, or only those cases where the sale price exceeds the Auditor's value by a certain amount. Each BOE would be free to select whatever thresholds they wish, but would be required to pass a resolution publically setting forth the parameters.

This would eliminate the potential of favoritism among filing complaints as the complaint would be filed regardless of who owns the property, thereby keeping the blindfold on justice.

Thank you for your time and I urge you to remove this provision from Am. Sub. H.B. 49 or in the alternative adopt one or more of the alternative measures discussed.

2011 Ohio Tax LEXIS 1549

State of Ohio -- Board of Tax Appeals

August 09, 2011, Entered

CASE NO. 2008-A-947 (REAL PROPERTY TAX)

Reporter
2011 Ohio Tax LEXIS 1549 *

Board of Education of the Columbus City Schools, Appellant, vs. Franklin County Board of Revision, Franklin County Auditor, and *SNH* Knight Properties Trust, Appellees.

Subsequent History:

Later proceeding at *Columbus City Sch. Dist. Bd. of Educ. v. Franklin County Bd. of Revision, 2011 Ohio 4776, 2011 Ohio LEXIS 2348 (Ohio, Sept. 22, 2011)*

Prior History:

Bd. of Educ. of the Columbus City Schs v. Franklin County Bd. of Revision, 2010 Ohio Tax LEXIS 1961 (Ohio B.T.A., Dec. 7, 2010)

Core Terms

revise, ground lease, landlord, tenant, seller, subject land, auditor, lease, demised premises, property owner, true value, conveyance, valuation, board of education, taxable value, terminate, parcel, probative evidence, county board, encumbrance, deed

Counsel

[*1] APPEARANCES:

For the Appellant - Rich & Gillis Law Group, LLC, Allison Crites

For the County Appellees - Ron O'Brien, Franklin County Prosecuting Attorney, Paul M. Stickel, Assistant Prosecuting Attorney

For the Appellee Property Owner - Siegel, Siegel, Johnson & Jennings Co., LPA, Jason Lindholm

Opinion

DECISION AND ORDER

Ms. Margulies and Mr. Williamson concur. Mr. Johrendt is recused.

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant, from a decision of the Franklin County Board of Revision. In said decision, the board of revision determined the taxable value of the subject real property for tax year 2005.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the county board of revision, the record of the hearing before this board, and the briefs filed by counsel to the appellant and the appellee property owner.

The subject property, approximately 13.912 acres of land improved with a senior living facility, is located in the city of Columbus, Columbus City School District taxing district and is identified **[*2]** on the auditor's records as parcel number 010-017007. The value of the parcel, as determined by the county auditor and by the board of revision, is as follows:

AUDITOR

	TRUE VALUE	TAXABLE VALUE
Land	$ 1,371,000	$ 479,850
Building	14,679,000	5,137,650
Total	$ 16,050,000	$ 5,617,500

BOARD OF REVISION

	TRUE VALUE	TAXABLE VALUE
Land	$ 1,371,000	$ 479,850
Building	2,222,500	777,880
Total	$ 3,593,500	$ 1,257,730

In its notice of appeal, the board of education ("BOE") alleges that the correct total true value for the subject parcel is $ 16,050,000, with a corresponding taxable value of $ 5,617,500, based upon a sale of the subject land only in June 2004.

In considering how this matter came to be appealed to this board, we note that in March 2006, relying upon the price obtained in what the owner claims was a sale of the subject land and improvements, the property owner filed a complaint against the valuation of real property with the Franklin County Board of Revision seeking a decrease in the subject's total true value to $ 3,593,490. S.T. at Ex. 1. The board of education, in turn, filed a counter-complaint, seeking to maintain **[*3]** the auditor's valuation. S.T. at Ex. 2.

At the BOR hearing, counsel for the property owner offered evidence of the recent sale of the subject property, specifically the deed and conveyance fee statement, as well as the business' statement of operations. S.T. at Ex. 7 A, B, and C. No one was present to testify on behalf of the owner. On June 25, 2008, the BOR issued its decision, retaining the value for the subject land, but decreasing the value for the improvements so that the subject's total value would comport with the sale price. Thereafter, the board of education appealed the BOR's determination to us.

We begin by noting that a party who asserts a right to an increase or decrease in the value of real property has the burden to prove the right to the value asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision (1994), 68 Ohio St.3d 336, 1994 Ohio 498, 626 N.E.2d 933*; *Crow v. Cuyahoga Cty. Bd. of Revision (1990), 50 Ohio St.3d 55, 552 N.E.2d 892*; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision (1988), 37 Ohio St. 3d 318, 526 N.E.2d 64*. Consequently, it is incumbent upon an appellant challenging the decision of a board of revision to come forward and offer evidence **[*4]** which demonstrates its right to the value sought. *Cleveland Bd. of Edn., supra; Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision (1994), 68 Ohio St.3d 493, 1994 Ohio 501, 628 N.E.2d 1365*. Once an appellant has presented competent and probative evidence of true value, other parties asserting a different value then have a corresponding burden of providing sufficient evidence to rebut the appellant's evidence. *Springfield Local Bd. of Edn., supra*; *Mentor Exempted Village Bd. of Edn., supra.*

There does not appear to be a dispute between the parties about whether the sale of the subject in June 2004 constitutes an arm's-length transaction, as both the board of education and the property owner argue its application to the instant valuation

problem. The question is whether the sale included the land only, as the board of education contends, or the land and the improvements, as argued by the property owner. The board of revision concluded that the sale included both the land and improvements, and, as such, adjusted the subject's total true value to reflect the sale price.

This board's review of the sale begins with the copies of the deed and conveyance **[*5]** fee statement offered by the property owner to the BOR. The deed indicates that the parcel in question transferred in June 2004, with no accompanying explanation of what property, i.e., land and/or building, actually transferred, other than a metes and bounds description of the real property. The associated conveyance fee statement indicates that there are commercial buildings on the land; however, the conditions of sale (e.g., leased fee, leasehold, or part interest transferred) were not designated. The land value on the conveyance fee statement is reported as $ 480,100 and the building value is reported as $ 5,944,790, for a total value of $ 6,424,890. [1]

Total consideration for the sale is listed as $ 3,593,484.

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The purchase and sale agreement reflects that the parties to the sale of the subject are also parties to an amended and restated ground lease regarding the subject land and that the purchaser is exercising its right to "purchase the real property demised **[*6]** under the Ground Lease from the Seller pursuant to the terms and conditions of the Ground Lease. " Ex. J at unnumbered page. The agreement goes on to provide in pertinent part:

> "2.1 Purchase and Sale. In consideration of the payment of the Purchase Price by the Purchaser to the Seller and for other good and valuable consideration, the Seller hereby agrees to sell to the Purchaser, and the Purchaser hereby agrees to purchase from the Seller, the Land [2]
>
> for the Purchase Price, subject to and in accordance with the terms and conditions of this Agreement.
>
> "2.2 Closing. The purchase and sale of the Land shall be consummated at a closing ***.
>
> "2.3 Purchase Price . The purchase price to be paid for the Land *** shall be THREE MILLION FIVE HUNDRED NINETY-THREE THOUSAND FOUR HUNDRED EIGHTY-FOUR AND 05/100s DOLLARS ($ 3,593,484.05), which the parties agree to be the fair market value for the Land as calculated in accordance with Section 41 of the Ground Lease.
>
> "***
>
> "5.5 Existing Leases, Etc. Other than the Ground Lease, the Seller has not entered into any contract or agreement with respect to the occupancy of Land which will be binding on the Purchaser after the Closing. **[*7]**
>
> "5.6 Agreements, Etc. Other than the Ground Lease, the Seller has not entered into any contract or agreement with respect to the Land which will be binding on the Purchaser after the Closing.
>
> ***
>
> "Except as otherwise expressly provided in this Agreement or any documents to be delivered to the Purchaser at the Closing, the Seller has not made and the Purchaser has not relied on any information, promise, representation or warranty, express or implied, regarding the Land, whether made by the Seller, on the Seller's behalf or otherwise. The Purchaser is fully familiar with the Land and shall purchase the Land in its 'as is' condition on the Closing Date.
>
> "***
>
> "8.1 Pro Ration of Ground Lease Rent. In addition to the Purchase Price, the Purchaser shall pay to the Seller at Closing an amount equal to the pro rata share of the rent due from the Purchaser to the Seller under the Ground Lease for the month of June, 2004 ***.

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[1] It is unclear how these values were determined.

[2] The "land" is defined in Section 1.7 of the purchase and sale agreement as "that certain parcel of land located in Franklin County, Ohio, and the appurtenant easement estates and other rights described on Exhibit A, attached hereto and made a part hereof, together with all rights and appurtenances thereto, including, without limitation, all right, title and interest in and to any adjacent streets, alleys or rights of way." We note that Exhibit A is a metes and bounds description of the subject land, as taken from the Franklin County records.

"***

"10.1 Allocation of Liability. Except as otherwise provided under the Ground Lease, it is expressly understood and agreed that the Seller shall be liable to third parties for any and all obligations, claims, losses, damages, liabilities, and expenses **[*8]** arising out of events, contractual obligations, acts, or omissions of the Seller that occurred in connection with the ownership or operation of the Land prior to the Closing and the Purchaser shall be liable to third parties for any and all obligations, claims, losses, damages, liabilities and expenses arising out of events, contractual obligations, acts, or omissions of Purchaser that occur in connection with the ownership of the Land after the Closing. ***" (Emphasis Sic.) Ex. J at 3-9.

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The ground lease, as referenced in the sale agreement, indicates that the "[l]andlord has good, merchantable and marketable title to the fee simple estate in the Demised Premises, [3]

free and clear of any and all Encumbrances except the Permitted Encumbrances." Ex. A at 2. The ground lease goes on to describe that the "[t]enant has, at its sole cost and expense, heretofore developed and constructed a rental retirement community *** (the 'Facility') on the Demised Premises. " Ex. A at 4. The improvements constructed by the tenant on the demised premises:

"are and shall be the property of Tenant during, but only during, the continuance of the term hereof and no longer; and during the term hereof, Landlord shall have absolutely no participation whatsoever in the ownership and/or operation of the Facility. At all times during the term hereof, the improvements which are owned by Tenant shall not be conveyed, transferred or assigned unless such conveyance, transfer or assignment shall be to a person to whom this Lease is being transferred or assigned simultaneously herewith in compliance with the provisions of paragraph 25 hereof, and at all such times the owner **[*10]** of the leasehold estate created hereby shall also be the owner of said improvements. *** Upon any termination hereof, whether by reason of the normal expiration of the term hereof, the provisions of paragraph 24, 26 or 27 hereof, or any other cause whatsoever, if said improvements or any part thereof shall then be on the Demised Premises, all of Tenant's right, title and interest therein shall cease and terminate, title to said improvements shall vest in Landlord, and said improvements or the part thereof then on the Demised Premises shall be surrendered by Tenant to Landlord as provided in paragraph 39 hereof. No further deed or other instrument shall be necessary to confirm the vesting in Landlord of the title to said improvements." Ex. A at 4.

- - - - - - - - - - - - - - - - - -End **[*11]** Footnotes- - - - - - - - - - - - - - - - -

Based upon the foregoing language, during the life of the ground lease, the title to the subject land was in the landlord and the title to the subject buildings located thereon remained in the tenant. However, upon termination of the subject's lease, for any reason, title to the improvements located on the property would vest in the landlord.

In this instance, however, the tenant purchased the subject property under its option to purchase which became exercisable "(i) after the death of Landlord, at any time during the remainder of the initial term hereof or any Extension Period, or (ii) in any event, upon the expiration of the third (3rd) Extension Period, as the case may be, to purchase the Demised Premises then demised hereunder from Landlord, or Landlord's legal representatives, successors or assigns, as the case may be, free and clear of any and all Encumbrances of any kind or nature whatsoever, except the Permitted Encumbrances, for an amount equal to (y) Two Hundred Thousand Dollars ($ 200,000.00) per net acre, or (z) the then fair market value of the Demised Premises then demised hereunder, whichever is more. *** Conveyance of Landlord's **[*12]** reversionary estate in and to the Demised Premises *** to Tenant shall be by general warranty deed with full warranties of title, in form and substance satisfactory to Tenant, and subject only to the Permitted Encumbrances. " Ex. A at 24-25. The lease goes on to specifically provide how "fair market value" will be determined.

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[3] Per the amended and restated ground lease, the "demised premises" constitute "certain tracts of land *** described in Exhibit A ***." Ex. A. We again note that Exhibit A, as referred to in the ground lease, is a metes and bounds description of the subject land, as taken from the Franklin County records.

The property owner contends that several specific provisions of the ground lease demonstrate that the improvements were, in fact, owned by the landlord. We disagree. First, it contends that paragraph 9 of the lease states that upon termination of the lease, title to the improvements would "revert" to the landlord. Such characterization by the property owner suggests a "return" of the title to the subject improvements to the original owner, i.e., the landlord. However, the lease clearly states that during the term of the lease, the improvements would constitute the property of the tenant and would only be "surrendered" to the landlord if the lease were terminated, not at the time the tenant exercised its option to purchase. The property owner also cites to paragraphs 12, 22, 25 and 27 of the ground lease as evidence that the tenant must maintain the property in **[*13]** a certain fashion in anticipation of the title to the improvements ultimately going to the landlord. However, in the instant situation, the ground lease was not terminated and did not expire; it was simply reassigned to another entity. Ex. L. The tenant exercised its option under the ground lease to purchase the subject land from the landlord, and, as the provisions of the ground lease establish, at that time, title to the improvements was in the tenant and title to the land was in the landlord. H.R. at 14-15.

Thus, based upon the terms of the purchase and sale agreement, as amplified by the amended and restated ground lease, this board concludes that the sale of the subject property on or about June 7, 2004, included only the subject land. There being no credible evidence in the record to the contrary, we find that the sale of the land constitutes a valid, recent, [4] arm's-length [5] sale, and, therefore, the transfer price should be considered the best evidence of the value of the subject land as of January 1, 2005. See *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision, 106 Ohio St.3d 269, 2005 Ohio 4979, 834 N.E.2d 782*. See, also, *Zazworsky v. Licking Cty. Bd. of Revision (1991), 61 Ohio St.3d 604, 575 N.E.2d 842*; **[*14]** *Hilliard City School Bd. of Edn. v. Franklin Cty. Bd. of Revision (1990), 53 Ohio St.3d 57, 558 N.E.2d 1170*; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals (1964), 175 Ohio St. 410, 195 N.E.2d 908*.

[*15]

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Since the board of revision used the sale price to value both the subject land and improvements, we find there is no competent or probative evidence in the record to support the board of revision's reduction of the value of the improvements. Absent a recent sale, true value in money can be calculated by applying any of three alternative methods provided for in *Ohio Adm. Code 5703-25-07*: 1) the market data approach, which compares recent sales of comparable properties, 2) the income approach, which capitalizes the net income attributable to the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value. However, no appraisal evidence was offered.

The Supreme Court has recognized the very situation this board **[*16]** finds itself in when there is no competent, probative evidence of value in the record. It held:

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[4] We acknowledge that whether a sale is sufficiently "recent" to or too "remote" from tax lien date to qualify as the "best evidence" of value is not decided exclusively upon temporal proximity. *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision, 124 Ohio St.3d 27, 2009 Ohio 5932, at P32, 918 N.E.2d 972*. However, it remains the burden of a party contesting the utility of a sale to rebut the presumptions to be accorded it. See, e.g., *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision (1997), 78 Ohio St. 3d 325, 1997 Ohio 212, 677 N.E.2d 1197*; *South Euclid-Lyndhurst City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision (May 13, 2005), BTA No. 2003-G-1041*, unreported, at 9. Evident from numerous Supreme Court decisions, the mere passage of some months between sale and tax lien dates is not sufficient cause to disregard a sale. See, e.g., *HK New Plan Exchange Property Owner II L.L.C. v. Hamilton Cty. Bd. of Revision, 122 Ohio St.3d 438, 2009-Ohio-3546, 912 N.E.2d 95* (value based upon sale occurring twenty-four months prior to tax lien date); *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision, 108 Ohio St.3d 310, 2006 Ohio 1059, 843 N.E.2d 757* (reversing this board's decision and ordering that the property's taxable value as of January 1, 2002 be based upon its sale which occurred in October 2003, twenty-two months after tax lien date).

[5] In *Walters v. Knox County Bd. of Revision (1988), 47 Ohio St.3d 23, 546 N.E.2d 932*, the court found an arm's-length sale to be characterized by these elements: "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self interest." *Id. at 25*.

> "In the absence of probative evidence supporting the reduction in value ordered by the board of revision, and in light of the problems identified by the BTA with the even lower value proposed by the *** appraiser, the BTA's conclusion that the county auditor's original valuation should be reinstated was not unreasonable. 'In the absence of probative evidence of a lower value,' a county board of revision and the BTA 'are justified in fixing the value at the amount assessed by the county auditor. ' *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision (1998), 82 Ohio St.3d 193, 195, 1998 Ohio 248, 694 N.E.2d 1324* ***. The BTA's decision to reject the board of revision's valuation and reinstate the auditor's original finding is supported by the evidence, and the BTA did not abuse its discretion in reaching that conclusion." *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision, 106 Ohio St.3d 157, 2005 Ohio 4385, at P12, 833 N.E.2d 271*.

In addition, in *FirstCal Industrial 2 Acquisition LLC v. Franklin Cty. Bd. of Revision, 125 Ohio St.3d 485, 2010 Ohio 1921, at P31, 929 N.E.2d 426* **[*17]** , the court, citing to *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision, 123 Ohio St.3d 268, 2009 Ohio 4975, 915 N.E.2d 1196*, reiterated that "the auditor's valuation constitutes 'default valuation, ' the validity of which need not be separately proved."

Therefore, the value of the subject parcel, as of January 1, 2005, shall be as follows:

	TRUE VALUE	TAXABLE VALUE
Land	$ 3,593,480	$ 1,257,720
Building	14,679,000	5,137,650
Total	$ 18,272,480	$ 6,395,370

The Auditor of Franklin County is hereby ordered to cause the records to reflect the value determined herein for the subject real property and to assess the same in accordance therewith as provided by law.

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