

OHIO BOARD OF TAX APPEALS

Cincinnati School District)	CASE NO. 2002-J-1141
Board of Education,)	
)	(REAL PROPERTY TAX)
Appellant,)	
)	DECISION AND ORDER
vs.)	
)	
Hamilton County Board of Revision,)	
Hamilton County Auditor, and)	
Mt. Airy Properties, LLC,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	David C. DiMuzio, Inc. David C. DiMuzio 1900 Kroger Building 1014 Vine Street Cincinnati, Ohio 45202
For the County Appellees	Michael K. Allen Hamilton County Prosecuting Attorney Thomas J. Scheve Assistant Prosecuting Attorney Suite 4000 230 East Ninth Street Cincinnati, Ohio 45202-2174
For the Appellee Property Owner	Dinsmore & Shohl, LLP Mark C. Bissinger, David P. Fornshell Suite 1900 255 East Fifth Street Cincinnati, Ohio 45202-4720

Entered March 7, 2003

Mr. Johnson, Ms. Jackson, and Ms. Margulies concur.

The Board of Tax Appeals is considering this matter¹ pursuant to a notice of appeal filed by the appellant, Cincinnati School District Board of Education.

¹ The matter was previously dismissed as a premature appeal upon the authority of *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033, by order entered Dec. 20, 2002. Such order was subsequently vacated and jurisdiction retained by an order of the board entered Jan. 17, 2003.

(“BOE”) Appellant has appealed from a decision of the Hamilton County Board of Revision (“BOR”) that determined value for the subject real property for tax year 2001. The property is owned by appellee, Mt. Airy Properties, LLC (“Mt. Airy”), and located in the city of Cincinnati identified as parcel nos. 225-3-4, 225-3-32 and 225-3-93 on the auditor’s records.

The values determined by the auditor for tax year 2001 were:

Parcel 225-3-4

	TRUE VALUE	TAXABLE VALUE
Land	\$314,040	\$109,910
Building	\$351,440	\$123,000
Total	\$665,480	\$232,910

Parcel 225-3-32

Land	\$55,260	\$19,340
Building	\$ 0	\$ 0
Total	\$55,260	\$19,340

Parcel 225-3-93

Land	\$28,260	\$9,890
Building	\$ 0	\$ 0
Total	\$28,260	\$9,890

The values determined by the BOR for tax year 2001 were:

Parcel 225-3-4

	TRUE VALUE	TAXABLE VALUE
Land	\$314,040	\$109,910
Building	\$352,440	\$123,350
Total	\$666,480	\$233,260

Parcel 225-3-32

Land	\$55,260	\$19,340
Building	\$ 0	\$ 0
Total	\$55,260	\$19,340

Contemporaneously, appellant filed a notice of appeal from the dismissal order to the Supreme Court, docketed as Case No. 2003-0101. This appeal has been dismissed by the Supreme Court upon the joint application of the parties, upon a finding that such appeal is moot. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision, 03/04/2003 Case Announcement, 2003-Ohio-935*

Parcel 225-3-93		
Land	\$28,260	\$9,890
Building	\$ 0	\$ 0
Total	\$28,260	\$9,890

Counsel for the appellant BOE had initially filed a motion to dismiss the underlying complaint filed on behalf of Mt. Airy, asserting that it is the second complaint filed within the same interim period as precluded by R.C. 5715.19(A)(2). The matter has been submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript of the proceedings before the BOR, the BOE's motion to dismiss, the auditor's memorandum in opposition supporting the board's continuing jurisdiction, and the reply memoranda of the BOE and Mt. Airy.

The board finds that the record of the proceedings before the BOR is sufficient to determine the pending motion without further hearing. R.C. 5717.01 The statutory transcript establishes that Mt. Airy purchased the three parcels plus an additional parcel no. 225-3-31 in December 2000 for a sale price of \$750,000. As suggested by counsel, we also take administrative notice of our record of proceedings in *Cincinnati School Dist. Bd. of Ed. v. Hamilton Cty. Bd. of Revision, et al.*, (Mar. 22, 2002), BTA No. 2001-V-1078, unreported. In the prior matter, Mt. Airy filed a timely complaint seeking to reduce the value for tax year 2000 to reflect the sale price paid for the four parcels, which the BOR granted. This board did not determine the value of the property, but rather remanded the appeal to the BOR with instructions to dismiss Mt. Airy's 2000 complaint and ordered the Hamilton County Auditor to reinstate the value of \$1,679,310 assigned to the parcels for the 2000 tax year because its complaint had been filed by a non-lawyer. See *Sharon Village Ltd. v. Licking Cty.*

Bd. of Revision (1997), 78 Ohio St3d 479; *C.R. Truman L.P. v. Cuyahoga Cty. Bd. of Revision* (July 27, 2000), Cuyahoga App. No. 76713, unreported, discretionary appeal denied Apr. 11, 2001; *Downtown Property Management, Inc. v. Hamilton Cty. Bd. of Revision* (Sept. 21, 2001); BTA No. 2001-M-173, et seq., unreported.

The statutory transcript in the instant appeal establishes that the auditor, in the preparation of the tax list and duplicate for the tax year 2001, had replatted the four parcels purchased by Mt. Airy to the three parcels at issue in this appeal, and reassessed the property at a market value of \$749,000, *supra*, for the tax lien date of January 1, 2001. See Exhibit 2, auditor's report with attachments; Hearing Transcript for July 31, 2002 at pages 15 to 20, inclusive, testimony of auditor's representative.

On March 28, 2002, Mt. Airy had filed the instant complaint seeking a value of \$750,000 for the subject parcels as reflected by the December 2000 sale. The BOR assumed jurisdiction of the complaint and found value at \$750,000, *supra*.

The BOE argues first that the BOR was without jurisdiction because the complaint constituted the second filing within the same interim period as precluded by R.C. 5715.19(A)(2).² That section provides in pertinent part:

No person, board, or officer shall file a complaint against the valuation or assessment of any parcel that appears on the tax list if it filed a complaint against the valuation or assessment of that parcel for any prior tax year in the same interim period, unless the person, board, or officer alleges that the valuation or assessment should be changed due to one or more of the following circumstances that occurred after the tax lien date for the tax year for which the prior complaint was filed and that the circumstances were not taken into consideration with respect to the prior complaint:

² Property in Hamilton County was reappraised in 1999. Therefore the interim period includes 1999, 2000, and 2001.

- (a) The property was sold in an arm's length transaction, as described in section 5713.03 of the Revised Code;
- (b) The property lost value due to some casualty;
- (c) Substantial improvement was added to the property;
- (d) An increase or decrease of at least fifteen per cent in the property's occupancy has had a substantial economic impact on the property.

Upon the record before us, we conclude that the statutory preclusion in R.C. 5715.19(A)(2) is not applicable. This section precludes a second complaint as to the same value established for the interim period. However, in the instant appeal, the auditor, by virtue of the replatting of the property, exercised his statutory authority to change the value of the property within the interim period. While an auditor must reassess property within his county at the statutorily prescribed times, he has the discretion and authority to reassess property at any time. R.C. 5713.01, 5715.33, 5715.34.

We considered essentially the same question in *Bd. of Edn. of Berea City School Dist. v. Cuyahoga Cty. Bd. of Revision* (June 14, 1996), BTA Nos. 1994-G-1343 through 1348, unreported. We had before us a second complaint filed within a single interim period when the auditor had modified a plat, splitting some parcels and consolidating other parcels. The valuation of the original parcels had been previously challenged through the filing of two complaints. One year after the consolidation, a new parcel's value was challenged. In addressing the claim that the parcel had been previously subject to review by the board of revision, we held:

The property owner argues that none of the four referenced circumstances [delineated by R.C. 5715.19(A)(2)] exists in these cases, and therefore the BOR had no jurisdiction to consider the complaints. The argument begs the question. The issue to be determined is whether R.C. 5715.19(A)(2) applies to these cases. We find that it does not. R.C. 5715.19(A)(2) applies only when multiple complaints were filed in an interim period which involve the same parcels and/or the same valuation, as discussed more fully below.

R.C. 5715.19(A)(2) states that no person, board, or officer shall file a complaint against the valuation of any parcel if it filed a complaint against the valuation of that parcel for any prior tax year in the same interim period. In the present cases, the valuations were not the same, ***. The Auditor changed the values from 1991 to 1992; and the BOR properly determined that it had jurisdiction to consider the owner's complaints and revised the values of the various parcels. ***.”

In a later appeal, *Meijer, Inc. v. Clermont Cty. Bd. of Revision* (June 4, 1999), BTA No. 1998-M-671, the auditor, during an interim period, had reassessed property owned by Meijer to reflect the increase in value after completion of construction. The BOE sought dismissal of the second complaint because Meijer had failed to allege any of the circumstances justifying a second complaint under R.C. 5715.19(A)(2). Following our decision in *Berea*, we held the statute was not applicable where the auditor had increased the value during the interim period. To hold otherwise, we said “would jeopardize the legislative plan to approve a statutory scheme which permits an auditor to revalue property but precludes a property owner or other interested party from challenging the auditor's actions.” We might add that there is a fairly obvious question of due process of law if the result sought here were

to obtain. A taxpayer or other interested party may not be precluded from challenging a revaluation by an auditor during the interim period.

There is also a suggestion by counsel for the BOE that the provisions in R.C. 5715.19(D), relating to continuing complaints and carryover value, would preclude either the auditor or BOR from adjusting the value of the property for the 2001 tax year at issue in this appeal.

We do not find this provision applicable to the instant appeal for two reasons. First, although Mt. Airy's complaint filed for the year 2000 might be deemed to be a continuing complaint, the complaint did not invoke the jurisdiction of the BOR, as it was signed by a non-lawyer. Under *Elkem Metals Co., L.P. v. Washington Cty. Bd. of Revision* (1998), 81 Ohio St.3d 683, it did constitute a filing under R.C. 5715.19(A)(2), but it does not follow that an invalid complaint has any continuing legal effect. More to the point, Mt. Airy did file a valid complaint for the succeeding tax year 2001 upon which the BOR and this board have assumed jurisdiction to determine the value of the property at issue. As to the question of carryover value, the auditor had reassessed the property for the succeeding year in the interim period by virtue of the replatting of the property. There is no authority that this provision limits the auditor's authority to reassess in a proper case. We find that the Supreme Court decision in *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1996), 74 Ohio St.3d 639, fully supports our conclusion. Construing R.C. 5715.19 together with R.C. 5715.11, which requires the BOR to hear complaints against valuation, the court held:

“The foregoing makes it clear that a board of revision is required to hear and to determine a value for each valid complaint filed with it. No distinction is made for the situation where a prior complaint may still be pending. Id. at 641.

The court continued:

The only interpretation that will harmonize the competing portions of R.C. 5715.19 is one that will nullify neither the right to file a complaint nor the duty of the board of revision to hear and decide the complaint. The only construction of R.C. 5715.19 that will achieve this result is one that holds that the carryover from the filing of a prior complaint is not applicable to the tax year and succeeding years for which a valid new complaint is filed and determined by the board of revision. Thus, the filing of a valid new complaint in the second triennium stops, for the tax year at issue and succeeding years, the automatic carryover of the value determined under a prior complaint. Id. at 642.

Although in the cited case, the second valid complaint was filed in the succeeding triennium, the court’s rationale is equally applicable to a second valid complaint filed within the same triennium after an auditor’s reassessment of the property.

For the foregoing reasons, we conclude that the BOE’s motion to dismiss is not well taken and it is hereby denied. The caption matter shall remain pending for further proceedings as provided by the board’s rules of practice and procedure. It is ordered that the period for discovery be extended and shall commence with the issuance of this order. Ohio Adm. Code 5717-1-11.

ohiosearchkeybta