

**OHIO BOARD OF TAX APPEALS**

Kimco Brunswick Associates, ) CASE NO. 2004-J-1108  
)  
Appellant, ) (REAL PROPERTY TAX)  
)  
vs. ) DECISION AND ORDER  
)  
Medina County Board of Revision, )  
Medina County Auditor, and the )  
Brunswick City School District )  
Board of Education, )  
)  
Appellees. )

APPEARANCES:

For the Appellant - Armstrong, Mitchell, Damiani & Zaccagnini  
Timothy J. Armstrong  
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For the County Appellees - Dean Holman  
Medina County Prosecuting Attorney  
Katharina E. Devanney  
Assistant Prosecuting Attorney  
60 Public Square  
Medina, Ohio 44256

For the Appellee Board of Education - Britton, Smith, Peters & Kalail Co., L.P.A.  
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Cleveland, Ohio 44131-6814

Entered March 11, 2005

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

The Board of Tax Appeals is considering this matter pursuant to a notice of appeal filed by Kimco Brunswick Associates (“appellant”). The appellant has appealed from a decision of the Medina County Board of Revision (“BOR”) that dismissed appellant’s complaint challenging the auditor’s value for

the subject real property for tax year 2003. The property is located in the Brunswick taxing district and is identified on the auditor's records as parcels 03-18B-39-148, and 03-18B-46-017.

A review of the record indicates that the BOR dismissed the complaint before it, finding the complaint to be a second filing within a triennial period for which no rehabilitating circumstances had been alleged. On November 19, 2004 this board issued an order requiring the appellant to show cause why the appeal should not be dismissed, which in effect, affirms the actions of the BOR. Counsel for the appellant and counsel for the Brunswick City School District Board of Education ("BOE") each filed briefs in response to the show cause order. The board finds that the facts contained within the statutory transcript and in the briefs are sufficient to determine the merits of the appeal.

On March 31, 2003 an original complaint challenging the auditor's value for the subject real property for tax year 2002 was filed on behalf of the property owner. The complaint listed the name of the owner as "Kimco Realty Corporation." The BOR dismissed that complaint because it failed to list the correct name of the owner of the property.

On February 20, 2004 an original complaint challenging the auditor's value for the subject real property for tax year 2003 was filed on behalf of the property owner. The complaint listed the name of the owner as "Kimco Brunswick Associates," which is the owner's name listed on the property record card. Nevertheless, the BOR dismissed the complaint because it failed to list one

of the four exceptions enumerated in R.C. 5715.19 that would justify the filing of a second complaint within a triennial period.

The BOE argues that the BOR correctly dismissed the complaint because it constituted a second filing within the same triennial period and is prohibited by R.C. 5715.19(A)(2).<sup>1</sup> 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:

“(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 review, we must conclude that Kimco Brunswick Associates did not file a prior complaint on the subject property in the same interim period. Kimco Realty Corporation, a separate legal entity, filed the earlier complaint. As

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<sup>1</sup> Property in Medina County was appraised in 2001. Therefore the triennial period includes 2001, 2002, and 2003.

such, the prohibition prescribed by R.C. 5715.19(A)(2) does not apply. Therefore the appeal is remanded to the BOR for a full determination on the merits.

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