

IN THE SUPREME COURT OF OHIO

Mike Ferris Properties, Inc., : **Case No. 2013-1544**
 : **On Appeal from the**
Appellant, : **Ohio Board of Tax Appeals**
 :
v. : **Case No. 2010-Y-3507**
 :
Franklin County Board of Revision, et al. :
Appellees. :

REPLY BRIEF OF APPELLANT

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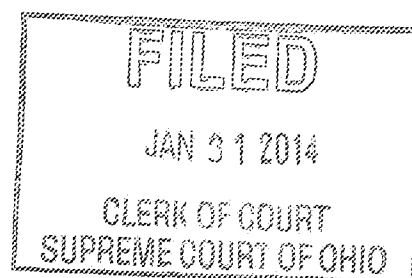
Auditor and Franklin County Board of Revision

Joseph W. Testa, Franklin County

Tax Commissioner of Ohio

30 East Broad Street, 22nd Floor

Columbus, Ohio 43215



REPLY

“When a board of revision adopts the valuation of property presented by the taxpayer over the auditor’s valuation, the burden shifts to the contesting party on appeal to demonstrate the true value of the property. When the party challenging the board of revision’s determination fails to present any evidence supporting its valuation or the auditor’s valuation and the only evidence in the record negates the auditor’s valuation, the BTA must determine if there is sufficient evidence in the entire record for the BTA to perform an independent analysis.”¹

Here, as in *Board of Education of Dublin City Schools v. Franklin County Board of Revision*, the BOE did not present any evidence before the board of revision or the BTA. Thus, it failed to meet its burden. Evidence in the record negated the auditor’s valuation of Forest Street. According to the BTA’s Decision, “[t]he appellant [BOR] argued that Ferris Properties did not meet its burden of proof, but offered no evidence or testimony.”² The BOE could have provided evidence to support its counterclaim before the BOR and the BTA, but it did not.

Instead of providing evidence, the BOR questions and misconstrues the evidence. The BOE states that Ferris relies “upon a scrivener’s error in the BOR’s hearing notes that construction was complete in 2008. Why the hearing notes in the record are a “scrivener’s error” and unreliable yet the field notes that the BOE relies upon are not, the BOE does not explain. The BOE says Ferris “blatantly ignores” a field note in the record that says the building was 60% complete when the “Auditor’s office performed a

¹ *Board of Education of Dublin City Schools v. Franklin County Board of Revision*, 101613 OHSC, 2012-1432, 2013-Ohio-4543 citing to Ohio Adm.Code 5703-25-06(G).

² Transcript, p. 2

field inspection **in 2008.**" [emphasis added] But the field note does not say the building was 60% in 2008, it states it was 60% complete on December 6, 2007.

The BOE also objects to Ferris' appraisal because it does not conclude to a value as of the tax lien date at issue, yet the BOE suggests the value of Forest Street can be determined from a field inspection performed in 2007.

The BOE appealed the BOR's 2009 tax valuation of Forest Street and states Forest Street was complete as of January 1, 2009. As completed, the BOR looked at the evidence provided by Ferris and determined Forest Street was valued at \$350,000. What evidence does the BOE provide that Forest Street was valued at \$970,000? None.

The BOE states that it demonstrated in this matter that the BOR erred when it granted a reduction in value. The BOE says it did so by drawing the BTA's attention to the facts. The BOE's facts are incorrect. The BOE's brief incorrectly states that Ferris "did not submit evidence of the actual costs such as pro rata costs of constructing the fourth condominium unit or costs associated with the renovation of the original three units in the present matter."³ Contrary to BOE's claim, Ferris submitted actual costs of constructing the fourth unit, which is not a condominium unit, and the costs associated with the renovation of the original three units at the 2008 and the 2009 BOR hearings.⁴ As shown in the record, the cost of constructing the fourth unit was \$224,110 and the cost of renovation to the three units was \$28,000 per unit.⁵

Ferris presented competent and probative evidence including construction costs, rental income, rental costs, and an appraisal at both the 2008 and 2009 BOR hearings that supported the 2009 BOR's determination that Forest Street, as improved, is valued at

³ BOE Merit Brief, p. 4

⁴ Transcript, p. 4

⁵ Transcript, p. 4

\$350,000. The BOE did not present any evidence to support its valuation or the Auditor's valuation. It is clear from a review of the record that the auditor's valuation of the Ferris Property was too high. An increase in the value of a three unit rental building constructed to include a fourth unit and unit improvements from \$350,000 to \$970,000 is not supported in the record. "Under Ohio law, '[i]f a building, structure, fixture or other improvements to land is under construction on January first of any year, its valuation shall be based upon its value or percentage of completion as it existed on January first'.⁶ If the BOE wants to rely on its assumption that Forest Street was only 60% complete on January 1, 2008, then its value in 2009 as completed would be approximately \$584,000. The record affirmatively negates the validity of the county's \$970,000 valuation.⁷

The BOE failed to provide evidence to support its or the auditor's 2009 valuation of the Ferris Property. The BTA acted unreasonably and unlawfully by reverting to the auditor's 2009 valuation.

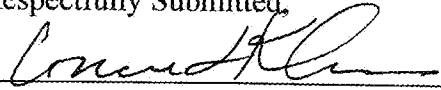
CONCLUSION

For the foregoing reasons, Appellant Mike Ferris Properties, Inc. respectfully requests this Court reverse the decision and order of the Ohio Board of Tax Appeals and remand the case to the Ohio Board of Tax Appeals with instructions to find the fair market value or true value in money of the Ferris Property to be \$350,000 as held by the Board of Revision decision.

⁶ *Board of Education of Dublin City Schools v. Franklin County Board of Revision*, 101613 OHSC, 2012-1432, 2013-Ohio-4543 citing to Ohio Adm.Code 5703-25-06(G).

⁷ *Colonial Village, Ltd v. Washington Cty. Bd of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, 915 N.E.2d 1196, 24.

Respectfully Submitted,



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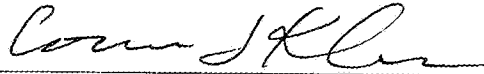
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CERTIFICATE OF SERVICE

I certify that a copy of this Reply of Appellant was sent by regular United States mail, postage prepaid, to counsel for appellees, Rich & Gillis Law Group, Angela Petrova, 6400 Riverside Drive, Suite D, Dublin, Ohio 43017, Ron O'Brien, Franklin County Prosecuting Attorney, William J. Stehle, Assistant Prosecuting Attorney, 373 S. High Street, 20th Floor, Columbus, Ohio 43215-6310, and Joseph W. Testa, Tax Commissioner of Ohio, 30 East Broad Street, 22nd Floor, Columbus, Ohio 43215 this 3/5th day of January, 2014.



Connie J. Klema, Counsel of Record for Mike Ferris Properties, Inc.