IN THE SUPREME COURT
STATE OF OHIO
APPEAL FROM THE BOARD OF TAX APPEALS

GC NET LEASE @ (3) (WESTERVILLE) INVESTORS, LLC/THE GC NET LEASE (WESTERVILLE) INVESTORS, LLC/JP MORGAN CHASE BANK, N.A. AND JP MORGAN CHASE, N.A., Appellant, v. FRANKLIN COUNTY BOARD OF REVISION, FRANKLIN COUNTY AUDITOR, AND TAX COMMISSIONER OF THE STATE OF OHIO, Appellees, and WESTERVILLE CITY SCHOOLS BOARD OF EDUCATION, Appellee.	)	SUPREME COURT CASE NUMBER: 2017-0792 BOARD OF TAX APPEALS CASE NO. 2016-540

BRIEF OF APPELLANT

William J. Stehle (0077613)
COUNSEL OF RECORD
Assistant Prosecuting Attorney
373 South High Street, 14th Floor
Columbus, OH 43215
P: (614) 525-3500
F: (614) 525-2530

ATTORNEY FOR COUNTY APPELLEES

Todd W. Sleggs (0040921)
COUNSEL OF RECORD
SLEGGS, DANZINGER & GILL, CO., LPA
820 W. Superior Ave., Seventh Floor
Cleveland, OH 44113
P: (216) 771-8990
F: (216) 771-8992

ATTORNEY FOR APPELLANT
GC NET LEASE @ (3) (WESTERVILLE) INVESTORS, LLC/THE GC NET LEASE (WESTERVILLE) INVESTORS, LLC/JP MORGAN CHASE BANK, N.A. AND JP MORGAN CHASE, N.A.

Mike DeWine
Ohio Attorney General
State Office Tower, 17th Floor
30 East Broad Street
Columbus, OH 43215-3428
P: (614) 462-7519
F: (614) 466-8226

ATTORNEY FOR APPELLEE TAX COMMISSIONER OF THE STATE OF OHIO

Kimberly G. Allison (0061612)
COUNSEL OF RECORD
Rich & Gillis Law Group, LLC
6400 Riverside Drive, Suite D
Dublin, OH 43017
P: (614) 228-5822
F: (614) 540-7474

ATTORNEY FOR APPELLEE WESTERVILLE CITY SCHOOLS BOARD OF EDUCATION

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STATEMENT OF THE CASE

This case comes to the Court from a decision and order of the Ohio Board of Tax Appeals under Revised Code Section 5717.04. A complaint for the tax year 2014 was filed by the Appellant in connection with the real property tax assessment of the office building that is the subject of this appeal. Supplement to the Briefs (hereinafter Supp.) at page 5. The basis for the Appellant's complaint was an appraisal of the unencumbered fee simple value of the real estate. Supp. at pages 39-150 and 447 (Transcript at page 14).[1] A November 14, 2013 lease fee sale of the property was noted on the Appellant's complaint in response to questions 9 and 10. Supp. at page 5.

The Franklin County Board of Revision conducted a hearing on the complaint on February 23, 2016 and issued a decision on March 9, 2016 where the County Auditor's assessment of the property ($35,500,000) was increased to a fair market value of $44,500,000 for the tax year 2014. Supp. at pages 22 and 26-28. The Appellant appealed the March 9, 2016 decision of the Franklin County Board of Revision to the Ohio Board of Tax Appeals under Revised Code Section 5717.01. Supp. at pages 32-37.[2]

When this matter came up for hearing before the Ohio Board of Tax Appeals the Appellant had its appraiser testify to the value of the unencumbered fee simple value of the real estate. Supp. at pages 444-450. No additional evidence was submitted by any of the parties.[3] In

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[1] The appraisal was marked as Appellant's Exhibit A before the Franklin County Board of Revision and Exhibit 1 before the Ohio Board of Tax Appeals. Supp. at page 445 (Transcript at page 6).

[2] The Franklin County Board of Revision conducted a hearing on the complaint but the audio from that hearing was lost so the parties resubmitted their cases at the hearing conducted by the Ohio Board of Tax Appeals. Supp. at page 4 and pages 444-450 (Transcript at pages 1-27).

[3] Certain exhibits omitted from the Board of Revision Transcript were submitted at the Board of Tax Appeals hearing. Supp. at page 445 (Transcript at pages 6-8).

its decision and order the Ohio Board of Tax Appeals rejected the appraisal evidence valuing the unencumbered fee simple value of the real estate submitted by the Appellant and assessed the property based upon the February 14, 2013 $44,500,000 leased fee sale of the property. Board of Tax Appeals decision and order at page 4.[4]

At the hearing before the Board of Revision, the Appellant raised the issue of the change to R.C. 5713.03 requiring the county auditor to assess the unencumbered fee simple interest in the real estate and giving the county auditor discretion in using a sale of property for assessment purposes.[5] Supp. at pages 26 and 412. See R.C. 5713.03. This was a change from the prior statute that did not give the county auditor discretion in accepting recent arm's-length sales in determining value and did not explicitly contain the fee simple value standard.[6] The Appellant also directed the Board of Tax Appeals to OAC Rule 5703-25-07 which in subsection (D)(2) requires the county auditor to give weight to normal vacancies and credit losses under the

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[4]The sales history of the property is summarized at page A-5 of the appraisal by Mr. Koon. Supp. at page 50. Mr. Koon testified that the value reported for the subject property was an allocation done involving the sale of 18 properties, that included the subject property. See Supp. at page 160. The sale documentation was submitted to the Board of Revision along with a copy of the Court's decision in *Consolidated Aluminum Corporation v. Monroe Cty. Bd. of Revision*, 66 Ohio St.2d 410. See Exhibits B, C, D, E and H in the Transcript on Appeal. Supp. at pages 151 to 411 and 415 to 417. Mr. Koon testified that he could not understand the basis for the allocation, which is another reason that the transfer of the property should not be considered in determining the unencumbered fee simple value of the real property. Supp. at pages 448-449 (Transcript at pages 20-21). See also *Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2017-Ohio-7664 at paragraph 34 (approving use of appraisal testimony to demonstrate that an allocation of a bulk-sale price is improper because it does not reflect the true value of the property.) The Board of Revision hearing record (Transcript Exhibit E, Supp. at page 26) references the 18 asset acquisition and notes "allocated value per lease." See also Supp. at pages 160 and 448 (Transcript at page 20).

[5] House Bill 487 added the fee simple estate, as if unencumbered, requirement to R.C. 5713.03 effective September 10, 2012. Appendix at pages 19 and 36. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415.

[6] See *Rite Aid of Ohio, Inc. v. Washington Cty. Bd. of Revision,* 146 Ohio St.3d 173, 2016-Ohio-371 at Footnote 2.

income approach (not just the actual occupancy of the property).[7] The appraisal report of Samuel D. Koon and Associates submitted at the hearing before the Board of Revision valued the unencumbered fee simple interest in the real estate at $28,500,000 and is consistent with the requirements of OAC 5703-25-07 (D)(2). Mr. Koon considered the contract rent (lease) of the property (Supp. at page 90) as well as current economic market conditions (Supp. at page 105) and applied a market vacancy and collection loss, expenses and capitalization rate in valuing the unencumbered fee simple interest in the real property under the income approach at $28,500,000. (Supp. at pages 89 through 117).[8] Mr. Koon also considered the sales comparison approach in his appraisal of the property. (Supp. at pages 118 through 139).[9] His conclusion of the unencumbered fee simple value of the real property at $28,500,000 (Supp. at page 141) should have been adopted by the Board of Tax Appeals. Since the Board of Tax Appeals ignored the appraisal evidence in the record (See Board of Tax Appeals decision and order at page 4), the Appellant filed its appeal to this Court.

LAW AND ARGUMENT

PROPOSITION OF LAW NO. I

THE FEE SIMPLE STANDARD UNDER R.C. 5713.03 REQUIRES AN INQUIRY INTO WHETHER A LEASE IN PLACE REFLECTS MARKET TERMS AT THE TIME OF A SALE.

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[7] The directive in that subsection that the value determined should consider both the value of the leased fee and the leasehold value effectively results in a fee simple value determination since positive lease fee value would be offset by a corresponding negative leasehold value and vice-versa. See The Appraisal of Real Estate, Twelfth Edition, at page 82. Appendix at page 32. This is shown in the attached diagram (Figure 5.4 from the 12th Edition of The Appraisal of Real Estate at page 82). Appendix at page 32. This is discussed in more detail under Proposition of Law No. II.

[8] In this case, Mr. Koon testified that the market vacancy as of January 1, 2014 in Westerville was 15.1% versus the November 14, 2013 leased fee sale of the property at 100% occupancy. Supp. at page 105.

[9] The occupancy of the sales, like the subject property, were adjusted to reflect market occupancy (85%) to arrive at the unencumbered fee simple value of the real estate. Supp. at pages 135 and 448-449 (Transcript at pages 17-18 and 23-25). See *Steak 'n Shake, Inc. vs. Warren Cty. Bd. of Revision, 145 Ohio St.3d 244, 251, 2015-Ohio-4836.*

This proposition of law addresses the following assignments of error:

ASSIGNMENT OF ERROR NO. 1

The Board of Tax Appeals decision and order using a sale that reflected the leased fee value of the real estate to determine value when no evidence was submitted to show that the sale reflected the unencumbered fee simple value of the real estate as required by R.C. 5713.03 is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 2

The Board of Tax Appeals decision and order adopting the use of a sale when the evidence in the record showed that the sale did not reflect the unencumbered fee simple value of the real estate is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 5

The Board of Tax Appeals interpretation of R. C. 5713.03 as amended is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 7

The Board of Tax Appeals rejection or failure to consider the appraisal testimony regarding the lease encumbering the property is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 9

The Board of Education did not meet their burden of proof on appeal to show that the November 2013 transaction reflected the unencumbered fee simple value of the real estate and as a result the Board of Tax Appeals decision and order is unreasonable and unlawful.

At the time of the November 14, 2013 sale of the property, the entire property (100%) was subject to a long-term lease with an initial term of 15 years with four (4) additional five (5) year renewal terms for a total of 35 years. Supp. at pages 90, 104, and 160. The lease was entered into by the tenant as part of a sale and leaseback of the property back in 2010.[10] Supp. at pages 90, 91, 104, and 120. The Appellant's appraiser reviewed the lease and concluded that the

[10] See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2017-Ohio-7578 at paragraph 23 discussing "the propriety of considering appraisal evidence when evaluating the relationship between a sale/leaseback and the market."

lease for 100% of the property did not reflect market occupancy as of January 1, 2014 because vacancy in the market was 15.1%. Supp at page 105. His conclusion of market rent at $8.50 per square foot (Supp. at page 104) was very close to the contract rent under the lease at $8.12 per square foot. Supp. at page 90.[11] Under the rules before the Ohio Board of Tax Appeals, the Appellee had the right to submit rebuttal evidence on appeal. See Ohio Administrative Code Rule 5717-1-07 (A)(2). There is no evidence in the appeal rebutting the Appellant's evidence that the lease encumbering the property at an occupancy of 100% was not reflective of market conditions as of January 1, 2014 (15.1% vacancy) and the Board of Tax Appeals' failure to consider this evidence is unreasonable and unlawful. This evidence clearly showed that the November 14, 2014 leased fee sale of the property did not reflect the unencumbered fee simple value of the real property as of January 1, 2014. The Board of Tax Appeals decision and order ignoring this evidence is unreasonable and unlawful.

The amendment in House Bill 487 to R.C. 5713.03 in 2012 adding the fee simple (as if unencumbered) valuation requirement and changing the word from "shall" to "may" in the statute with respect to the consideration of sales takes this case outside the scope of *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (2005), 16 Ohio St.3d 269 (hereinafter *Berea*) and the cases cited by the Board of Tax Appeals at pages 3 and 4 in its decision and order. These cases were all decided before the amendment to R.C. 5713.03 discussed above and this Court's decision in *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2017-Ohio-4415. The unencumbered fee simple value standard ensures that all real property in the State is valued by uniform rule according to the market value of the unencumbered fee

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[11] Mr. Koon's calculation of contract rent varies slightly from the purchase agreement at $8.28 per square foot (Supp. at page 160) because the purchase agreement calculation included projected rental payments for future tenants and contractual rent increases. See Footnote 2 at Supp. page 160.

simple estate in the real estate, not its book value (cost), value in use, leased fee value, or some other non-uniform standard. See Article XII §2 Ohio Constitution.

While this appeal has been pending, the Court rendered the decision in *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415 (hereinafter *Terraza*). In *Terraza*, the Court recognized in the syllabus that "a sale price no longer conclusively determines . . . value as it did under prior law". The Court specifically noted that the amendment of R. C. 5713.03 in H.B. 487 "allows taxing authorities to consider non-sale-price evidence - particularly evidence of encumbrances and their effect on sale price - in determining the true value of property that has been the subject of a recent arm's-length sale." *Terraza*, Slip Opinion at paragraph 27. The Court went on to hold that under R. C. 5713.03 as amended by H.B. 487 "a recent arm's-length sale price is not conclusive evidence of the true value of property." *Terraza*, Slip Opinion at paragraph 30. Based on the holding of the Court in *Terraza*, the Board of Tax Appeals decision and order in this appeal in unreasonable and unlawful. *Terraza* involved a 2013 tax year appeal and the holding of the Court applies to this 2014 tax year appeal. The Board of Tax Appeals decision and order in this appeal is very similar to the Board of Tax Appeals decision and order in *Terraza.* Specifically, like the Board of Tax Appeals in *Terraza* the Board of Tax Appeals in this case stated that:

> Because we have concluded that the subject sale is the best indication of the subject property's value as of January 1, 2014, we need not consider Koon's appraisal report. Board of Tax Appeals decision and order at page 4.

As a result, and consistent with the *Terraza* decision, the Board of Tax Appeals order in this appeal in unreasonable and unlawful and it is requested that the Court vacate the decision of

the Ohio Board of Tax Appeals and remand the case to the Board to address and weigh the appraisal evidence before it in this appeal.[12]

PROPOSITION OF LAW NO. II

OHIO ADMINISTRATIVE CODE RULE 5703-25-07 (A)(2) REQUIRES THAT NORMAL VACANCIES AND CREDIT LOSSES AS WELL AS LEASED FEE AND LEASEHOLD VALUE BE CONSIDERED IN DETERMINING FEE SIMPLE VALUE UNDER R.C. 5713.03.

This proposition of law addresses the following assignments of error:

ASSIGNMENT OF ERROR NO. 3

The Board of Tax Appeals decision and order rejecting appraisal evidence and testimony as to the unencumbered fee simple value of the real estate is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 4

The Board of Tax Appeals decision and order to reject Appellant's unrebutted appraisal evidence on the issue of the unencumbered fee simple value of the real estate is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 6

The Board of Tax Appeals decision and order is contrary to the requirements of OAC Rule 5703-25-07 and is therefore unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 8

The Board of Tax Appeals characterization of Appellant's argument that all "sales of real property encumbered by leases are no longer reflective of true value" is not correct and demonstrates the Board's failure to understand the effect of the amendments to R. C. 5713.03. As a result, the Board's decision and order is unreasonable and unlawful.

Ohio Administrative Code Rule 5703-25-07 (D)(2) discusses the valuation of real property under the income approach for real property tax purposes and provides that:

> The value is estimated by capitalizing the net income after expenses, including normal vacancies and credit losses . . . The value should consider both the value of the leased fee and the leasehold. (Emphasis added).

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[12] No additional evidence need be submitted in this case on remand to the Ohio Board of Tax Appeals.

The leasehold value (positive or negative) impacts the value of the leased fee interest in real estate, but not the fee simple value of the real estate at issue in this appeal. See The Appraisal of Real Estate, Twelfth Edition, at pages 81-84. Appendix at pages 29-34. The difference between the leased fee and fee simple value is best highlighted by the following passage from The Appraisal of Real Estate:

> When an assignment involves the valuation of a leased fee interest, the appraiser often must also appraise the fee simple interest. If the rent and/or terms of the lease are favorable to the landlord (lessor), the value of the leased fee interest will usually be greater than the value of the fee simple interest, resulting in a negative leasehold interest. If the rent and/or terms of the lease are favorable to the tenant (or lessee), the value of the leased fee interest will usually be less than the value of the fee simple interest, resulting in a positive leasehold interest (see Figure 5.4). The negative or positive leasehold interests will cease if contract rent and/or terms equal market rent and/or terms any time during the lease or when the lease expires.
>
> The Appraisal of Real Estate,
> Twelfth Edition, at page 82, Appendix at page 32.
> (Emphasis added.)

The leasehold interest of a tenant can impact the leased fee interest of the property owner. See *Euclid/Lyndhurst Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1996), 74 Ohio St.3d 314, 317 (a willing buyer would pay less for a property if the leaseback arrangement limited the amount of rent the buyer could collect). Positive leased fee value (here a long term lease at 100% occupancy) is offset by a corresponding negative leasehold value (market conditions at a 20% vacancy) and vice-versa. When both leased fee (positive or negative) and leasehold value (negative or positive) are considered under OAC Rule 5703-25-07 (A)(2) the result is fee simple value.

The above discussion can be shown schematically, like figure 5.4 at page 82 in The Appraisal of Real Estate, as follows:

Leased fee sale:	11/14/13	$44,500,000	(positive leased fee interest)
County Auditor:	1/1/2014	$35,500,000	(Supp. at page 1)
Samuel D. Koon and Associates fee simple value		$28,500,000	(no positive or negative leasehold interest) (no positive or negative leased fee interest)

Only the Appellant's appraisal values the unencumbered fee simple value of the real estate and excludes the impact of any leased fee or leasehold interest. The relevance of the Samuel D. Koon and Associates appraisal in this case is the fact that it is the only evidence in this appeal of the unencumbered fee simple value of the real estate as required by R.C. 5713.03 as amended. The Board of Tax Appeals decision and order ignoring this evidence is unreasonable and unlawful.

R.C. 5713.03 requires that the unencumbered fee simple interest in the real estate be valued for tax purposes by the County Auditor, Board of Revision, and Board of Tax Appeals. They must avoid capturing the leased fee interest in the real estate which, The Appraisal of Real Estate recognizes, "could be greater than the fee simple interest . . ." (a negative leasehold situation). See The Appraisal of Real Estate, at page 82, Appendix at page 32.[13] This was the finding of Mr. Koon in his appraisal. Supp. at pages 105 and 449 (Transcript at pages 24-25). As a result, the November 14, 2013 leased fee sale of the property cannot be used to value the unencumbered fee simple interest in the property for real property tax purposes in Ohio. The

[13] In this case the lease at 100% occupancy for a term of potentially 35 years (Supp. at page 104) exceeds market occupancy by 15% (Supp. at page 105).

Board of Tax Appeals decision and order based on the leased fee sale of the property is unreasonable and unlawful.

The amendment to R.C. 5713.03 to require the fee simple, as if unencumbered, valuation of real estate ensures the uniform valuation and taxation of real estate regardless of any contractual encumbrances on the real property. The Board of Tax Appeals order valuing the real estate using a leased fee sale of the property when the appraisal evidence in the case showed that the leased fee value reflected in the sale price exceeded the unencumbered fee simple value of the real estate is unreasonable and unlawful. The Appellees did not submit any evidence in this case to rebut Appellant's appraisal evidence.

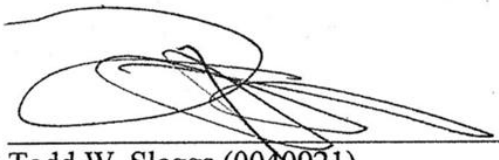
CONCLUSION

For the foregoing reasons, the Appellant, GC Net Lease @ (3) (Westerville) Investors, LLC/The GC Net Lease (Westerville) Investors, LLC/JP Morgan Chase Bank, N.A. and JP Morgan Chase, N.A., respectfully requests that this Court reverse the decision and order of the Ohio Board of Tax Appeals and issue an order remanding the appeal to the Board of Tax Appeals with directions to determine the fee simple value of the real estate based upon the

appraisal evidence submitted by the Appellant, or in the alternative, reinstate the County Auditor's assessment of $35,500,000 for the property as of January 1, 2014.

Respectfully submitted,

SLEGGS, DANZINGER & GILL, CO., LPA



Todd W. Sleggs (0040921)
COUNSEL OF RECORD
820 W. Superior Avenue – Seventh Floor
Cleveland, OH 44113
P: (216) 771-8990
F: (216) 771-8992
tsleggs@sdglegal.net

ATTORNEY FOR APPELLANT
GC NET LEASE @ (3) (WESTERVILLE) INVESTORS, LLC/THE GC NET LEASE (WESTERVILLE) INVESTORS, LLC/JP MORGAN CHASE BANK, N.A. AND JP MORGAN CHASE, N.A.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Brief of Appellant was served electronically this 25th day of October, 2017 upon the following:

William J. Stehle, Esq.
Assistant Prosecuting Attorney
373 South High Street, 20th Floor
Columbus, OH 43214
william_stehle@franklincountyohio.gov

ATTORNEY FOR COUNTY APPELLEES

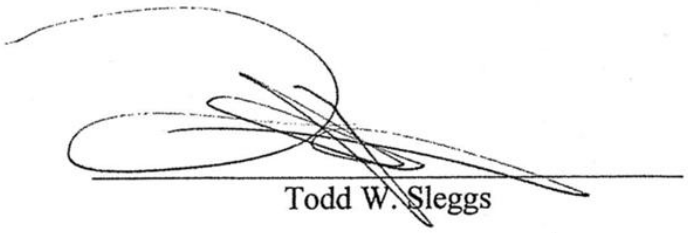
Kimberly G. Allison, Esq.
Rich & Gillis Law Group, LLC
6400 Riverside Drive, Suite D
Dublin, OH 43017
kallison@richgillislawgroup.com

ATTORNEY FOR APPELLEE WESTERVILLE
CITY SCHOOLS BOARD OF EDUCATION

and by regular U. S. mail upon:

Mike DeWine
Ohio Attorney General
State Office Tower, 17th Floor
30 East Broad Street
Columbus, OH 43215-3428

ATTORNEY FOR APPELLEE TAX
COMMISSIONER OF THE STATE OF OHIO



Todd W. Sleggs

IN THE SUPREME COURT
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APPEAL FROM THE BOARD OF TAX APPEALS

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v.	)	
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Appellees,	)	
and	)	
WESTERVILLE CITY SCHOOLS BOARD OF EDUCATION,	)	
Appellee.	)	

NOTICE OF APPEAL

William J. Stehle (0077613)
COUNSEL OF RECORD
Assistant Prosecuting Attorney
373 South High Street, 14th Floor
Columbus, OH 43215
P: (614) 525-3500
F: (614) 525-2530

ATTORNEY FOR COUNTY APPELLEES

Todd W. Sleggs (0040921)
COUNSEL OF RECORD
SLEGGS, DANZINGER & GILL, CO., LPA
820 W. Superior Ave., Seventh Floor
Cleveland, OH 44113
P: (216) 771-8990
F: (216) 771-8992

ATTORNEY FOR APPELLANT
GC NET LEASE @ (3) (WESTERVILLE) INVESTORS, LLC/THE GC NET LEASE (WESTERVILLE) INVESTORS, LLC/JP MORGAN CHASE BANK, N.A. AND JP MORGAN CHASE, N.A.

Mike DeWine
Ohio Attorney General
State Office Tower, 17th Floor
30 East Broad Street
Columbus, OH 43215-3428
P: (614) 462-7519
F: (614) 466-8226

ATTORNEY FOR APPELLEE TAX COMMISSIONER OF THE STATE OF OHIO

Kimberly G. Allison (0061612)
COUNSEL OF RECORD
Rich & Gillis Law Group, LLC
6400 Riverside Drive, Suite D
Dublin, OH 43017
P: (614) 228-5822
F: (614) 540-7476

ATTORNEY FOR APPELLEE WESTERVILLE CITY SCHOOLS BOARD OF EDUCATION

IN THE SUPREME COURT
STATE OF OHIO
APPEAL FROM THE BOARD OF TAX APPEALS

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Appellant,	)	
v.	)	
FRANKLIN COUNTY BOARD OF REVISION, FRANKLIN COUNTY AUDITOR, AND TAX COMMISSIONER OF THE STATE OF OHIO,	)	BOARD OF TAX APPEALS CASE NO. 2016-540
Appellees,	)	NOTICE OF APPEAL TO THE SUPREME COURT OF OHIO PURSUANT TO SECTION 5717.04 REVISED CODE
and	)	
WESTERVILLE CITY SCHOOLS BOARD OF EDUCATION,	)	
Appellee.	)	

The Appellant, GC Net Lease (Westerville) Investors, LLC/The GC Net Lease (Westerville) Investors, LLC/JP Morgan Chase Bank, N.A. and JP Morgan Chase, N.A., by and through counsel, hereby gives notice of its appeal to the Supreme Court of The State of Ohio, from a Decision and Order of the Ohio Board of Tax Appeals, rendered on the 17th day of May, 2017, a copy of which is attached hereto as "Exhibit A" and which is incorporated herein as though fully rewritten in this Notice of Appeal.

The Errors complained of are attached hereto as "Exhibit B" which is incorporated herein by reference.

Respectfully submitted,

SLEGGS, DANZINGER & GILL, CO., LPA

Todd W. Sleggs (0040921)
COUNSEL OF RECORD
820 W. Superior Avenue – Seventh Floor
Cleveland, OH 44113
P: (216) 771-8990
F: (216) 771-8992

ATTORNEYS FOR APPELLANT
GC NET LEASE @ (3) (WESTERVILLE) INVESTORS, LLC/THE GC NET LEASE (WESTERVILLE) INVESTORS, LLC/JP MORGAN CHASE BANK, N.A. AND JP MORGAN CHASE, N.A.

OHIO BOARD OF TAX APPEALS

GC NET LEASE @ (3) (WESTERVILLE) INVESTORS, LLC, ET AL., (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-540

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GC NET LEASE @ (3) (WESTERVILLE) INVESTORS, LLC, ET AL.
Represented by:
TODD W. SLEGGS
SLEGGS, DANZINGER & GILL, CO., LPA
820 WEST SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND, OH 44113

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

WESTERVILLE CITY SCHOOLS BOARD OF EDUCATION
Represented by:
KIMBERLY G. ALLISON
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Wednesday, May 17, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 080-005563-00, for tax years 2014 and 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record developed at this board's hearing, and any written argument submitted by the parties.

The subject property, an office building, was initially assessed at $35,500,000. The property owners filed a decrease complaint with the BOR, which requested that the subject property's value be reduced to $28,000,000. The affected board of education ("BOE") filed a counter-complaint, which objected to the request.

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Second, we note that the statutory transcript is deficient. Not only has the BOR failed to provide a record of the BOR merit hearing, as previously noted, it also failed to provide all of the evidence submitted on the matter, i.e., the sale documents submitted by the BOE. Parties and various tribunals rely upon boards of revision to fulfill their statutory duties to create and maintain a record capable of being reviewed on appeal. R.C. 5715.08; R.C. 5717.01. The Supreme Court has noted that "[f]ailure to certify the entire evidentiary record may prejudice the interest of the proponents of the omitted items, and therefore, boards of revision should take care to comply with the statutory duty to certify the *entire* record." (Emphasis in original.) *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078, at ¶27, fn.4. Therefore, the BOR should take care to ensure its evidentiary record is accurate.

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It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The court reaffirmed its position in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 138 Ohio St.3d 223, 2014-Ohio-523 ("*HIN II*"), ¶14, stating "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) Accordingly, the affirmative burden clearly rests with the opponent of using a reported sale price to demonstrate why it does not reflect the property's value. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 78 Ohio St.3d 325, 327 (1997).

We begin our analysis with the $44,500,000 transfer of the subject property to the property owners in October 2013. Neither party disputes the arm's-length character, recency, or voluntariness of the sale. However, the property owners argued that the subject sale cannot be used to value the subject property because the purchase price reflected the value of the lease in place at the time of the transfer, i.e., the leased fee interest, in contravention of R.C. 5713.03, which requires real property to be valued in the fee simple interest. This board has repeatedly rejected such arguments, and finds no reason to deviate in this case. See, e.g., *Milford Exempted Village Schools Bd. of Edn. v. Clermont Cty. Bd. of Revision* (May 9, 2016), BTA No. 2015-1093, unreported.

Moreover, to the extent that the property owners asserted that the price paid for real property, subject to a lease, cannot be indicative of value, we reject this argument as well. "The total range of private ownership interests in real property is called the *bundle of rights*," which includes "the right to sell an interest[;] the right to lease an interest[;] the right to occupy the property[;] the right to mortgage an interest[; and] the right to give an interest away[.]" (Emphasis in original.) The Appraisal of Real Estate (14th Ed.2013) 5. Fee simple ownership of real property includes the entire bundle of rights. The record is void of any evidence that the subject sale transferred anything less than fee simple ownership to the buyer, i.e., the property owners, or that the seller, i.e., Wells REIT, retained a reversionary interest in the subject property. Although we acknowledge that the seller has given up "the right to occupy the property," i.e., the subject property is encumbered by a lease, in exchange for rental payments, such right is only one of the bundle of rights of fee simple ownership. The court has recognized "'[a] fee simple' may be absolute, conditional, or subject to defeasance, but the mere existence of encumbrances does not affect its status as fee simple. Black's Law Dictionary (8th Ed.2004) 648-649." *Meijer Stores Ltd. Partnership v. Franklin County Bd. of Revision*, 122 Ohio St.3d 447, 2009-Ohio-3479, at ¶23, fn. 4. In so doing, in *Meijer*, the court stated:

> "[T]he possibility of encumbering a property like the one at issue here constitutes -- as a purely factual matter -- one method of realizing the value of legal ownership of the property. See *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, *** ¶ 27 ('encumbering property typically represents an owner's attempt to realize the full value of the property'); *AEI Net Lease Income & Growth Fund*, 119 Ohio St.3d 563, 2008-Ohio-5203, *** ¶ 21 (sale-leaseback, in its totality, constituted an arm's-length transaction in which seller/lessee and buyer/lessor each pursued the objective to realize value of the realty)." (Parallel citations omitted.) Id. at ¶ 23.

Moreover, in *HIN*, supra, the court held:

> "Additionally, HIN relies on *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision*, 37 Ohio St.3d 16 *** (1988), in support of its position that we must value the property as if unencumbered by the U.S. Bank lease. In *Alliance Towers*, we stated that '[f]or real property tax purposes, the fee simple estate is to be valued as if it were unencumbered.' *Id.* at paragraph one of the syllabus. In *Cummins*, however, we distinguished *Alliance Towers* because it involved a valuation by appraisal, not the validity of a sale price. *Cummins*, 117 Ohio St.3d 516, 2008-Ohio-1473, *** at ¶ 15. We found *Alliance Towers* to be inapposite and affirmed that it would never be proper to adjust a recent arm's-length sale price because of an encumbrance." (Parallel citations omitted.) Id. at ¶ 24.

Likewise, we find that it would be improper to adjust the $44,500,000 sale price because of the lease, particularly in this instance when the evidence suggested that the underlying lease was at, or below, market rents. Hearing Record at 22.

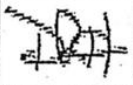
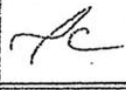
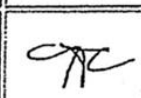
To the extent that the property owners argued that we should disregard the subject sale because it was based on the allocation of the bulk purchase of several different parcels, we likewise reject this argument. As the opponent of using the reported sale price, the property owners had the burden to demonstrate why it does not properly reflect the true value of the parcel. See, *HIN II*, supra; *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921. In this matter, we find that the property owners have failed to meet that burden.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the property owners failed to rebut the presumptions accorded to the subject sale. Absent an affirmative demonstration that such sale was not a qualifying sale for tax valuation purposes, we find that it was a recent, arm's-length sale upon which we rely to determine the subject property's value for tax year 2014.

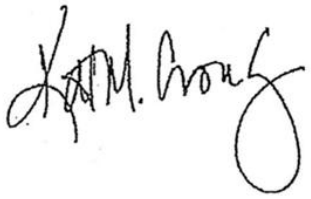
Because we have concluded that the subject sale is the best indication of the subject property's value as of January 1, 2014, we will not consider Koon's appraisal report. "It is only when the purchase price does not reflect the true value that a review of independent appraisals based upon other factors is appropriate. *Ratner v. Stark Cty. Bd. of Revision*, 23 Ohio St.3d 59 (1986), ***." (Parallel citation omitted). *Pingue v. Franklin Cty. Bd. of Revision*, 87 Ohio St.3d 62, 64 (1999). See, also, *Cummins*, supra at ¶23 ("[W]e erred ***when we authorized the use of appraisals to adjust the price set in a recent, arm's-length transaction. To do so places the cart (appraisal) before the horse (an actual arm's-length sale)."). Additionally, "the mere fact that an expert has opined a different value should not be deemed sufficient to undermine the validity of the sale price as the property value." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 146 Ohio St.3d 470, 2016- Ohio-757, ¶20.

However, we are unable to determine the subject property's value because it is subject to a tax increment financing ("TIF") agreement and, therefore, includes a taxable and non-taxable portion of the property. As a result, we remand this matter to the BOR to allocate the $44,500,000 purchase price according to the TIF agreement.

It is the order of the Board of Tax Appeals that the subject property be assessed in conformity with this decision and order.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Harbarger		
Ms. Clements		
Mr. Caswell		

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



Kathleen M. Crowley, Board Secretary

EXHIBIT "B"

ASSIGNMENT OF ERRORS

ASSIGNMENT OF ERROR NO. 1

The Board of Tax Appeals decision and order using a sale that reflected the leased fee value of the real estate to determine value when no evidence was submitted to show that the sale reflected the unencumbered fee simple value of the real estate as required by R.C. 5713.03 is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 2

The Board of Tax Appeals decision and order adopting the use of a sale when the evidence in the record showed that the sale did not reflect the unencumbered fee simple value of the real estate is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 3

The Board of Tax Appeals decision and order rejecting appraisal evidence and testimony as to the unencumbered fee simple value of the real estate is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 4

The Board of Tax Appeals decision and order to reject Appellant's unrebutted appraisal evidence on the issue of the unencumbered fee simple value of the real estate is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 5

The Board of Tax Appeals interpretation of R. C. 5713.03 as amended is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 6

The Board of Tax Appeals decision and order is contrary to the requirements of OAC Rule 5703-25-07 and is therefore unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 7

The Board of Tax Appeals rejection or failure to consider the appraisal testimony regarding the lease encumbering the property is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 8

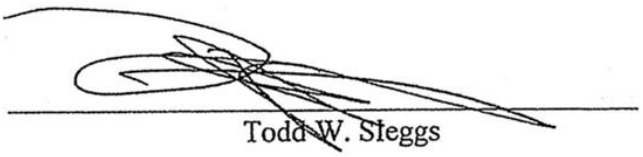
The Board of Tax Appeals characterization of Appellant's argument that all "sales of real property encumbered by leases are no longer reflective of true value" is not correct and demonstrates the Board's failure to understand the effect of the amendments to R. C. 5713.03. As a result, the Board's decision and order is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 9

The Board of Education did not meet their burden of proof on appeal to show that the November 2013 transaction reflected the unencumbered fee simple value of the real estate and as a result the Board of Tax Appeals decision and order is unreasonable and unlawful.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing NOTICE OF APPEAL was mailed via certified United States mail, postage prepaid, to William J. Stehle, Esq., Assistant Prosecuting Attorney, 373 South High Street, 20th Floor, Columbus, OH 43214, Attorney for Appellees Franklin County Board of Revision and Franklin County Auditor; Kimberly G. Allison, Esq., Rich & Gillis Law Group, LLC, 6400 Riverside Drive, Suite D, Dublin, OH 43017, Attorney for Appellee Westerville City Schools Board of Education; Mike DeWine, Ohio Attorney General, State Office Tower, 17th Floor, 30 East Broad Street, Columbus, OH 43215-3428, Attorney for Appellee Tax Commissioner of the State of Ohio on this 12th day of June, 2017.



Todd W. Steggs

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OHIO BOARD OF TAX APPEALS

GC NET LEASE @ (3) (WESTERVILLE) INVESTORS, LLC, ET AL., (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-540

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GC NET LEASE @ (3) (WESTERVILLE) INVESTORS, LLC, ET AL.
Represented by:
TODD W. SLEGGS
SLEGGS, DANZINGER & GILL, CO., LPA
820 WEST SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND, OH 44113

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

WESTERVILLE CITY SCHOOLS BOARD OF EDUCATION
Represented by:
KIMBERLY G. ALLISON
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Wednesday, May 17, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 080-005563-00, for tax years 2014 and 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record developed at this board's hearing, and any written argument submitted by the parties.

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> "Additionally, HIN relies on *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision*, 37 Ohio St.3d 16 *** (1988), in support of its position that we must value the property as if unencumbered by the U.S. Bank lease. In *Alliance Towers*, we stated that '[f]or real property tax purposes, the fee simple estate is to be valued as if it were unencumbered.' *Id.* at paragraph one of the syllabus. In *Cummins*, however, we distinguished *Alliance Towers* because it involved a valuation by appraisal, not the validity of a sale price. *Cummins*, 117 Ohio St.3d 516, 2008-Ohio-1473, *** at ¶ 15. We found *Alliance Towers* to be inapposite and affirmed that it would never be proper to adjust a recent arm's-length sale price because of an encumbrance." (Parallel citations omitted.) Id. at ¶ 24.

Likewise, we find that it would be improper to adjust the $44,500,000 sale price because of the lease, particularly in this instance when the evidence suggested that the underlying lease was at, or below, market rents. Hearing Record at 22.

To the extent that the property owners argued that we should disregard the subject sale because it was based on the allocation of the bulk purchase of several different parcels, we likewise reject this argument. As the opponent of using the reported sale price, the property owners had the burden to demonstrate why it does not properly reflect the true value of the parcel. See, *HIN II*, supra; *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921. In this matter, we find that the property owners have failed to meet that burden.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the property owners failed to rebut the presumptions accorded to the subject sale. Absent an affirmative demonstration that such sale was not a qualifying sale for tax valuation purposes, we find that it was a recent, arm's-length sale upon which we rely to determine the subject property's value for tax year 2014.

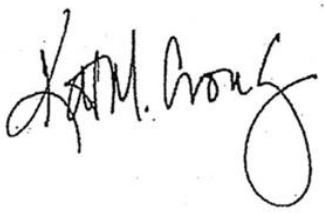
Because we have concluded that the subject sale is the best indication of the subject property's value as of January 1, 2014, we will not consider Koon's appraisal report. "It is only when the purchase price does not reflect the true value that a review of independent appraisals based upon other factors is appropriate. *Ratner v. Stark Cty. Bd. of Revision*, 23 Ohio St.3d 59 (1986), ***." (Parallel citation omitted). *Pingue v. Franklin Cty. Bd. of Revision*, 87 Ohio St.3d 62, 64 (1999). See, also, *Cummins*, supra at ¶23 ("[W]e erred ***when we authorized the use of appraisals to adjust the price set in a recent, arm's-length transaction. To do so places the cart (appraisal) before the horse (an actual arm's-length sale)."). Additionally, "the mere fact that an expert has opined a different value should not be deemed sufficient to undermine the validity of the sale price as the property value." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 146 Ohio St.3d 470, 2016- Ohio-757, ¶20.

However, we are unable to determine the subject property's value because it is subject to a tax increment financing ("TIF") agreement and, therefore, includes a taxable and non-taxable portion of the property. As a result, we remand this matter to the BOR to allocate the $44,500,000 purchase price according to the TIF agreement.

It is the order of the Board of Tax Appeals that the subject property be assessed in conformity with this decision and order.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Harbarger		
Ms. Clements		
Mr. Caswell		

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



Kathleen M. Crowley, Board Secretary

Board of Revision

Franklin County • Ohio

BOR-14-002392-DL

March 9, 2016

GC NET LEAST @3
C/O ED ROONEY
575 WASHINGTON BLVD 4TH FLOOR
JERSEY CITY NJ 07310.

RE: BOR Case No.: 14-2392
Hearing Date: FEBRUARY 23, 2016

After consideration of the above complaint, the Board of Revision has rendered a decision effective as of tax lien date January 1, 2014 & 2015.

PARCEL	NEW MARKET VALUE
080-005563	$44,500,000

This value will carry forward according to law, unless the Auditor determines a change in value is warranted pursuant to the Ohio Revised Code.

You may appeal this decision by filing the proper notice of appeal with either the Ohio Board of Tax Appeals, (O.R.C. 5717.01), or with the Court of Common Pleas, (O.R.C. 5717.05). Such appeals must be filed within 30 days after the mailing of this notice. A copy of the notice of appeal must also be filed with our office.

Please contact our office at 614-525-3913 if you have any questions.

Sincerely,

Haley Callahan

Haley Callahan, Clerk
Franklin County Board of Revision

HJC/DK
CC: TODD W SLEGGS ESQ
JEFFREY A RICH ESQ

OVERPAYMENT POLICY

IF THE DECISION OF THE BOARD OF REVISION RESULTS IN A DECREASE IN PROPERTY VALUE YOU MAY BE ENTITLED TO A CREDIT OF OVERPAID TAXES. ANY TAXES OR ASSESSMENTS CHARGED TO THE PARCEL, IF OWNERSHIP HAS NOT CHANGED, WILL BE PAID OFF BEFORE A REFUND IS ISSUED. THANK YOU.

5713.03 County auditor to determine taxable value of real property.

The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of the fee simple estate, as if unencumbered but subject to any effects from the exercise of police powers or from other governmental actions, of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon and the current agricultural use value of land valued for tax purposes in accordance with section 5713.31 of the Revised Code, in every district, according to the rules prescribed by this chapter and section 5715.01 of the Revised Code, and in accordance with the uniform rules and methods of valuing and assessing real property as adopted, prescribed, and promulgated by the tax commissioner. The auditor shall determine the taxable value of all real property by reducing its true or current agricultural use value by the percentage ordered by the commissioner. In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor may consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. However, the sale price in an arm's length transaction between a willing seller and a willing buyer shall not be considered the true value of the property sold if subsequent to the sale:

(A) The tract, lot, or parcel of real estate loses value due to some casualty;

(B) An improvement is added to the property. Nothing in this section or section 5713.01 of the Revised Code and no rule adopted under section 5715.01 of the Revised Code shall require the county auditor to change the true value in money of any property in any year except a year in which the tax commissioner is required to determine under section 5715.24 of the Revised Code whether the property has been assessed as required by law.

The county auditor shall adopt and use a real property record approved by the commissioner for each tract, lot, or parcel of real property, setting forth the true and taxable value of land and, in the case of land valued in accordance with section 5713.31 of the Revised Code, its current agricultural use value, the number of acres of arable land, permanent pasture land, woodland, and wasteland in each tract, lot, or parcel. The auditor shall record pertinent information and the true and taxable value of each building, structure, or improvement to land, which value shall be included as a separate part of the total value of each tract, lot, or parcel of real property.

Amended by 129th General AssemblyFile No.186, HB 510, §1, eff. 3/27/2013.

Amended by 129th General AssemblyFile No.127, HB 487, §101.01, eff. 9/10/2012.

Effective Date: 09-27-1983

Related Legislative Provision: *See 129th General AssemblyFile No.186, HB 510, §3*

See 129th General AssemblyFile No.127, HB 487, §757.51.

5717.01 Appeal from county board of revision to board of tax appeals - procedure - hearing.

An appeal from a decision of a county board of revision may be taken to the board of tax appeals within thirty days after notice of the decision of the county board of revision is mailed as provided in division (A) of section 5715.20 of the Revised Code. Such an appeal may be taken by the county auditor, the tax commissioner, or any board, legislative authority, public official, or taxpayer authorized by section 5715.19 of the Revised Code to file complaints against valuations or assessments with the auditor. Such appeal shall be taken by the filing of a notice of appeal, in person or by certified mail, express mail, facsimile transmission, electronic transmission, or by authorized delivery service, with the board of tax appeals and with the county board of revision. If notice of appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. If notice of appeal is filed by facsimile transmission or electronic transmission, the date and time the notice is received by the board shall be the date and time reflected on a timestamp provided by the board's electronic system, and the appeal shall be considered filed with the board on the date reflected on that timestamp. Any timestamp provided by another computer system or electronic submission device shall not affect the time and date the notice is received by the board. Upon receipt of such notice of appeal such county board of revision shall by certified mail notify all persons thereof who were parties to the proceeding before such county board of revision, and shall file proof of such notice with the board of tax appeals. The county board of revision shall thereupon certify to the board of tax appeals a transcript of the record of the proceedings of the county board of revision pertaining to the original complaint, and all evidence offered in connection therewith. Such appeal may be heard by the board of tax appeals at its offices in Columbus or in the county where the property is listed for taxation, or the board of tax appeals may cause its examiners to conduct such hearing and to report to it their findings for affirmation or rejection. An appeal may proceed pursuant to section 5703.021 of the Revised Code on the small claims docket if the appeal qualifies under that section.

The board of tax appeals may order the appeal to be heard on the record and the evidence certified to it by the county board of revision, or it may order the hearing of additional evidence, and it may make such investigation concerning the appeal as it deems proper.

Amended by 130th General Assembly File No. 37, HB 138, §1, eff. 10/11/2013.

Effective Date: 03-14-2003

5717.04 Appeal from certain decisions of board of tax appeals to supreme court; parties who may appeal; certification.

This section does not apply to any decision and order of the board made pursuant to section 5703.021 of the Revised Code. Any such decision and order shall be conclusive upon all parties and may not be appealed.

The proceeding to obtain a reversal, vacation, or modification of a decision of the board of tax appeals shall be by appeal to the supreme court or the court of appeals for the county in which the property taxed is situate or in which the taxpayer resides. If the taxpayer is a corporation, then the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the supreme court or to the court of appeals for the county in which the property taxed is situate, or the county of residence of the agent for service of process, tax notices, or demands, or the county in which the corporation has its principal place of business. In all other instances, the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the court of appeals for Franklin county.

Appeals from decisions of the board determining appeals from decisions of county boards of revision may be instituted by any of the persons who were parties to the appeal before the board of tax appeals, by the person in whose name the property involved in the appeal is listed or sought to be listed, if such person was not a party to the appeal before the board of tax appeals, or by the county auditor of the county in which the property involved in the appeal is located.

Appeals from decisions of the board of tax appeals determining appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be instituted by any of the persons who were parties to the appeal or application before the board, by the person in whose name the property is listed or sought to be listed, if the decision appealed from determines the valuation or liability of property for taxation and if any such person was not a party to the appeal or application before the board, by the taxpayer or any other person to whom the decision of the board appealed from was by law required to be sent, by the director of budget and management if the revenue affected by the decision of the board appealed from would accrue primarily to the state treasury, by the county auditor of the county to the undivided general tax funds of which the revenues affected by the decision of the board appealed from would primarily accrue, or by the tax commissioner.

Appeals from decisions of the board upon all other appeals or applications filed with and determined by the board may be instituted by any of the persons who were parties to such appeal or application before the board, by any persons to whom the decision of the board appealed from was by law required to be sent, or by any other person to whom the board sent the decision appealed from, as authorized by section 5717.03 of the Revised Code.

Such appeals shall be taken within thirty days after the date of the entry of the decision of the board on the journal of its proceedings, as provided by such section, by the filing by appellant of a notice of appeal with the court to which the appeal is taken and the board. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten days of the date on which the first notice of appeal was filed or within the time otherwise prescribed in this section, whichever is later. A notice of appeal shall set forth the decision of the board appealed from and the errors therein complained of. Proof of the filing of such notice with the board shall be filed with the court to which the appeal is being taken. The court in which notice of appeal is first filed shall have exclusive jurisdiction of the appeal.

In all such appeals the commissioner or all persons to whom the decision of the board appealed from is required by such section to be sent, other than the appellant, shall be made appellees. Unless waiv--

notice of the appeal shall be served upon all appellees by certified mail. The prosecuting attorney shall represent the county auditor in any such appeal in which the auditor is a party.

The board, upon written demand filed by an appellant, shall within thirty days after the filing of such demand file with the court to which the appeal is being taken a certified transcript of the record of the proceedings of the board pertaining to the decision complained of and the evidence considered by the board in making such decision.

If upon hearing and consideration of such record and evidence the court decides that the decision of the board appealed from is reasonable and lawful it shall affirm the same, but if the court decides that such decision of the board is unreasonable or unlawful, the court shall reverse and vacate the decision or modify it and enter final judgment in accordance with such modification.

The clerk of the court shall certify the judgment of the court to the board, which shall certify such judgment to such public officials or take such other action in connection therewith as is required to give effect to the decision. The "taxpayer" includes any person required to return any property for taxation.

Any party to the appeal shall have the right to appeal from the judgment of the court of appeals on questions of law, as in other cases.

Amended by 130th General Assembly File No. 37, HB 138, §1, eff. 10/11/2013.

Amended by 128th General AssemblyFile No.9, HB 1, §101.01, eff. 10/16/2009.

Effective Date: 10-05-1987

5703-25-07 Appraisals.

(A) Each general reappraisal of real property in a county shall be initiated by an entry and order of the tax commissioner directed to the county auditor of the county concerned which shall specify the time for beginning and completing the appraisal as provided by section 5715.34 of the Revised Code. In January of each year the commissioner shall adopt a journal entry wherein is set forth the status of reappraisals in the various counties and the tax year upon which the next reappraisal and the next triennial update of real property values in each county shall be completed.

(B) Each lot, tract, or parcel of land, and all buildings, structures, fixtures, and improvements to land shall be appraised by the county auditor according to true value in money, as it or they existed on tax lien date of the year in which the property is appraised. It shall be the duty of the county auditor to so value and appraise the land and improvements to land that when the two separate values for land and improvements are added together, the resulting value indicates the true value in money of the entire property.

(C) Land shall be valued in accordance with the provision of rule 5703-25-11 of the Administrative Code. All land shall be valued according to its true value except where the owner has filed an application under section 5713.31 of the Revised Code for such land to be valued for real property tax purposes at the current value the land has for agricultural use, and the land is qualified to be so valued and taxed as provided in section 5713.30 of the Revised Code.

Buildings, structures, fixtures, and improvements to land shall be valued in accordance with the provisions of rule 5703-25-12 of the Administrative Code.

(D) In arriving at the estimate of true value the county auditor may consider the use of any or all of the recognized three approaches to value:

(1) The market data approach - The value of the property is estimated on the basis of recent sales of comparable properties in the market area after allowance for variation in features or conditions. The use of the gross rent multiplier is an adaptation of the m-arket approach useful in appraising rental properties such as apartments. This is most applicable to the types of property that are sold often.

(2) The income approach - The value is estimated by capitalizing the net income after expenses, including normal vacancies and credit losses. While the contract rental or lease of a given property is to be considered the current economic rent should be given weight. Expenses should be examined for extraordinary items. In making appraisals by the income approach for tax purposes in Ohio provision for expenses for real property taxes should be made by calculating the effective tax rate in the given tax district as defined in paragraph (E) of rule 5703-25-05 of the Administrative Code, and adding the result to the basic interest and capitalization rate, Interest and capitalization rates should be determined from market data allowing for current returns on mortgages and equities. The income approach should be used for any type of property where rental income or income attributed to the real property is a major factor in determining value. The value should consider both the value of the leased fee and the leasehold.

(3) The cost approach - The value is estimated by adding to the land value, as determined by the market data or other approach, the depreciated cost of the improvements to land. In some types of special purpose properties where there is a lack of comparable sales or income information this is the only approach. Due to the difficulties in estimating accrued depreciation, older or obsolete buildings value estimates often vary from the market indications.

(E) Ideally, all three approaches should be used but due to cost and time limitations, the cost approach as set forth in these rules is generally an appropriate first step in valuation for tax purposes. Values obtain-

by the cost approach should always be checked by the use of at least one of the other approaches if possible. In the event the auditor uses approaches of estimating true value other than the cost approach appropriate notations shall be shown on the property record.

(F) The appraiser is urged to refer to standard appraisal references as well as the excellent publications by many trade associations, etc., which provide valuable income, expense, and other types of information that may be used as bench marks in making the appraisal.

(G) Nothing set out in these rules shall be construed to prohibit the county auditor from the use of advanced techniques, such as computer assisted appraisals, in the application of the three approaches to the appraisal of real property for tax purposes. However, such programs must be submitted to the tax commissioner for the approval on an individual basis.

R.C. 119.032 review dates: 07/25/2014 and 07/25/2019
Promulgated Under: 5703.14
Statutory Authority: 5703.05
Rule Amplifies: 5713.01, 5715.01
Prior Effective Dates: 12-28-73; 11-1-77; 9-18-03

5717-1-07 Case management schedules and special case management procedures.

(A) The board presumes that no hearing is required in any appeal unless scheduled pursuant to paragraph (A) of rule 5717-1-16 of the Administrative Code. Parties will be noticed by the board upon the filing of the appeal of the date on which written legal argument may be presented or the date on which the appeal will be heard. Other than appeals diverted to the board's small claims docket, appeals will proceed on the board's regular docket as set forth below. In appeals proceeding under case management schedules established by this rule, the board will only consider evidence contained within the transcript certified to it, submitted by joint agreement of all parties, or received at hearing. If no hearing before the board is scheduled and an appeal is submitted upon the existing record, disclosure deadlines are inapplicable and rendered moot. Failure to adhere to established deadlines may result in the denial of requests to adjust or amend a case management schedule, the exclusion of written legal argument, the prohibition against introducing documents and testimony into evidence, or such other action as deemed appropriate.

(1) Appeals identified by the board as appropriate for accelerated calendaring due to the routine nature of the issues presented, e.g., jurisdictional issues, or involving appeals which appear to qualify for the small claims docket but were not selected, shall adhere to the following schedule:

(a) The transcript from the lower tribunal shall be certified within forty-five days of the filing of a notice of appeal;

(b) Only if a hearing is scheduled, appellant shall disclose to all other parties the witnesses and evidence upon which the appeal is based sixty days after the filing of an appeal;

(c) Dispositive motions shall be filed sixty days after the filing of an appeal;

(d) Only if a hearing is scheduled, appellee(s) shall disclose to all other parties the witnesses and evidence upon which it relies and discovery shall be completed no more than seventy-five days after the filing of a notice of appeal, said deadline also serving as the last date for a party to seek the board's involvement in contested discovery matters;

(e) The last date for parties to file written legal argument, or the date of hearing if scheduled, shall be ninety days after the filing of an appeal.

Event	Latest Date of Occurrence After Appeal Filed (in days)
Transcript certified	45
Appellant disclosure of witnesses and evidence / Dispositive motions filed with	60
the board	
Appellee disclosure of witnesses and evidence / Discovery completed / Last date for seeking the board's involvement in contested discovery	75

Last date to file written legal argument	90

(2) Appeals from decisions of county boards of revision not proceeding on the small claims docket or under paragraph (A)(1) of this rule shall adhere to the following schedule:

(a) The transcript from the lower tribunal shall be certified within forty-five days of the filing of a notice of appeal;

(b) Dispositive motions shall be filed ninety days after the filing of an appeal;

(c) Only if a hearing is scheduled, discovery shall be completed not more than one hundred twenty days after the filing of a notice of appeal, said deadline also serving as the last date for a party to seek the board's involvement in contested discovery matters;

(d) Only if a hearing is scheduled, appellant shall disclose to all other parties the witnesses and evidence upon which the appeal is based not more than one hundred fifty days after the filing of a notice of appeal;

(e) Only if a hearing is scheduled, appellee(s) shall disclose to all other parties the witnesses and evidence upon which it relies not more than one hundred eighty days after the filing of a notice of appeal;

(f) The last date for parties to file written legal argument, or the date of hearing if scheduled, shall be two hundred ten days after the filing of an appeal.

Event	Latest Date of Occurrence After Appeal Filed (in days)
Transcript certified	45
Dispositive motions filed with the board	90
Discovery completed / Last date for seeking board's involvement in contested discovery	120
Appellant disclosure of witnesses and evidence	150
Appellee disclosure of witnesses and evidence	180
Last date to file written legal argument	210

(3) Appeals that are not from decisions of county boards of revision and are not proceeding on the small claims docket or under paragraph (A)(1) of this rule, shall adhere to the following schedule:

(a) The transcript from the lower tribunal shall be certified within forty-five days of the filing of a notice of appeal;

(b) Last date to amend appeal shall be sixty days after the transcript has been certified;

(c) Dispositive motions shall be filed one hundred twenty days after the filing of an appeal;

(d) Only if a hearing is scheduled, discovery shall be completed not more than one hundred fifty days after the filing of a notice of appeal, said deadline also serving as the last date for a party to seek the board's involvement in contested discovery matters;

(e) Only if a hearing is scheduled, appellant shall disclose to all other parties the witnesses and evidence upon which the appeal is based;

(f) Only if a hearing is scheduled, appellee(s) shall disclose to all other parties the witnesses and evidence upon which it relies not more than two hundred ten days after the filing of the appeal;

(g) The last date for parties to file written legal argument, or the date of hearing if scheduled, shall be two hundred forty days after the filing of an appeal.

Event	Latest Date of Occurrence After Appeal Filed (in days)
Transcript certified	45
Last date to amend appeal is sixty days after transcript has been certified	
Dispositive motions filed with the board	120
Discovery completed / Last date for seeking the board's involvement in contested discovery	150
Appellant disclosure of witnesses and evidence	180
Appellee disclosure of witnesses and evidence	210
Last date to file written legal argument	240

(4) Upon motion and for good cause shown, the parties may request, and the board may approve, an alternate case management schedule, extending or reducing any event or the schedule in its entirety. In appeals proceeding without hearing, the assigned date for submitting written legal argument may be extended upon request and shall be generally limited to no more than two extensions of not more than thirty days each. The parties may, by mutual agreement and without the board's approval or involvement, alter dates other than those that require board action. Prior to seeking modification of a case management schedule, the movant shall seek to obtain approval from all parties, demonstrating within its motion its efforts to secure such approval, and shall submit a proposed amended case schedule for board consideration. Whenever possible, a request for an alternate case management schedule shall be jointly submitted by the parties.

(B) Where an appeal presents unusual or complex issues or warrants increased board supervision, a p.

may, within ninety days after the filing of a notice of appeal, move the board to establish special case management procedures. Such motion shall be accompanied by a brief statement describing the circumstances which justify such treatment and a proposed case management schedule. The movant shall seek to secure agreement from all parties regarding the proposed case management schedule prior to its submission. Upon motion and good cause shown, the board may adjust or amend a case management schedule and take such action as deemed appropriate for the expeditious resolution of the appeal, including waiver of an applicable board rule, when deemed necessary.

Replaces: 5717-1-06

Effective: 1/19/2016
Five Year Review (FYR) Dates: 01/19/2021
Promulgated Under: 111.15
Statutory Authority: 5703.02
Rule Amplifies: 5703.02
Prior Effective Dates: 10/20/1977, 3/24/1989, 3/1/1996, 1/14/2005, 10/9/2013

The Appraisal of Real Estate

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Since all partial and fractional interests are "cut out" of the fee simple interest, the appraiser must have an understanding of the fee simple interest in a property prior to appraising a fractional or partial interest.

Economic Interests

The most common type of economic interests is created when the fee simple interest is divided by a lease. In such a circumstance, the lessor and the lessee each obtain partial interests, which are stipulated in contract form and are subject to contract law. The divided interests resulting from a lease represent two distinct but related interests—the leased fee interest and the leasehold interest. Additional economic interests, including sub-leasehold (or sandwich) interests, can be created under special circumstances.

Leased Fee Interests

A leased fee interest is the lessor's, or landlord's, interest. A landlord holds specified rights that include the right of use and occupancy conveyed by lease to others. The rights of the lessor (the leased fee owner) and the lessee (leaseholder) are specified by contract terms contained within the lease. Although the specific details of leases vary, a leased fee generally provides the lessor with the following:

- Rent to be paid by the lessee under stipulated terms
- The right of repossession at the termination of the lease
- Default provisions
- The right of disposition, including the rights to sell, mortgage, or bequeath the property, subject to the lessee's rights, during the lease period

When a lease is legally delivered, the lessor must surrender possession of the property to the tenant for the lease period and abide by the lease provisions.

The lessor's interest in a property is considered a leased fee interest regardless of the duration of the lease, the specified rent, the parties to the lease, or any of the terms in the lease contract. A leased property, even one with rent that is consistent with market rent, is appraised as a leased fee interest, not as a fee simple interest. Even if the rent or the lease terms are not consistent with market terms, the leased fee interest must be given special consideration and is appraised as a leased fee interest.

The valuation of a leased fee interest is best accomplished using the income capitalization approach. Regardless of the

Leases specify the rights of the lessor (e.g., to collect rent, to repossess the property upon lease expiration, to dispose of the property through sale or transfer) and the rights of the lessee (e.g., to use, occupy, improve, and sublease the property).

lessee: One who has the right to use or occupy a property under a lease agreement; the leaseholder or tenant.

lessor: One who holds property title and conveys the right to use and occupy the property under a lease agreement; the leased fee owner or landlord.

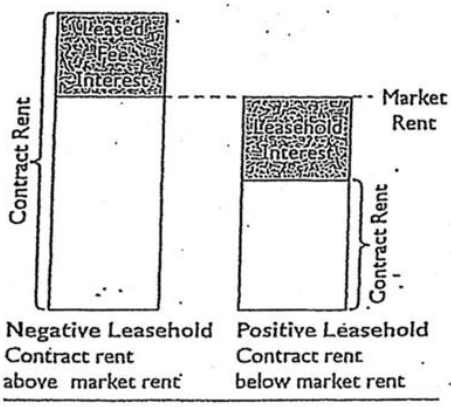
capitalization method selected, the value of the leased fee interest represents the owner's interest in the property. The benefits that accrue to an owner of a leased fee estate generally consist of income throughout the lease and the reversion at the end of the lease. The sales comparison approach can be used to value leased fee interests, but this analysis is only really meaningful when the sales being used as comparables are similar leased fee interests. If not, adjustments for real property rights conveyed must be considered. The cost approach is more suited to valuing a fee simple interest than a leased fee interest. If contract rent and terms are different than market rent and terms, the cost approach must also be adjusted to reflect the differences.

When an assignment involves the valuation of a leased fee interest, the appraiser often must also appraise the fee simple interest. If the rent and/or terms of the lease are favorable to the landlord (lessor), the value of the leased fee interest will usually be greater than the value of the fee simple interest, resulting in a negative leasehold interest. If the rent and/or terms of the lease are favorable to the tenant (or lessee), the value of the leased fee interest will usually be less than the value of the fee simple interest, resulting in a positive leasehold interest (see Figure 5.4). The negative or positive leasehold interests will cease if contract rent and/or terms equal market rent and/or terms any time during the lease or when the lease expires.

When analyzing a leased fee interest, it is essential that the appraiser analyze all of the economic benefits or disadvantages created by the lease. An appraiser should ask the following questions:

- What is the term of the lease?
- What is the likelihood that the tenant will be able to meet all of the rental payments on time?
- Are the various clauses and stipulations in the lease typical of the market, or do they create special advantages or disadvantages for either party?
- Is either the leased fee interest or the leasehold interest transferable, or does the lease prohibit transfers?
- Is the lease written in a manner that will accommodate reasonable change over time, or will it eventually become cumbersome to the parties?

Figure 5.4 Positive and Negative Leasehold Interests



An appraiser cannot simply assume that each of the interests created by the lease has a market value. Many leases create no separate value for the tenant. For example, when the tenant cannot or will not pay the rent, the market value of the leased fee interest may be reduced to an

amount less than the market value of a comparable property that is unleased or a comparable property leased to a more reliable tenant at below-market terms.

Leasehold Interests

The leasehold estate is the lessee's, or tenant's, estate. When a lease is created, the tenant usually acquires the rights to possess the property for the lease period, to sublease the property (if this is allowed by the lease and desired by the tenant), and perhaps to improve the property under the restrictions specified in the lease. In return, the tenant is obligated to pay rent, surrender possession of the property at the termination of the lease, remove any improvements the lessee has modified or constructed (if specified), and abide by the lease provisions. The most important obligation of a tenant is to pay rent.

The relationship between contract and market rent greatly affects the value of a leasehold interest. A leasehold interest may have value if contract rent is less than market rent, creating a rental advantage for the tenant. This relationship, in turn, is likely to affect the value of the leased fee interest. The value of a leased fee interest encumbered with a fixed rent that is below market rates may be worth less than the unencumbered fee simple interest or the leased fee interest with rent at market levels. When contract rent exceeds market rent, the leasehold is said to have negative value. However, the contract advantage of the leased fee may not be marketable. Even in such circumstances, the tenant still has the right to occupy the premises and, despite the contractual disadvantage, may have other benefits that warrant continued occupancy. It is also possible that the contract disadvantage imperils the tenant's business and increases the risk of continued occupancy.

Leasehold interests are typically valued using the income capitalization approach. The income to the position is the difference between market rent and contract rent. The capitalization or discount rate selected usually depends on the relationship between contract rent and market rent, and frequently the appraiser's judgment is critical in the rate selection. Since the leasehold interest ceases to exist at the expiration of the lease, there is usually no reversion to the leasehold interest. The sales comparison approach is only meaningful in those relatively rare situtations in which there are sales of

The market value of a leased fee interest depends on how contract rent compares to market rent. A leasehold interest may acquire value if the lease allows for subletting and the term is long enough so that market participants will pay something for the advantageous lease.

leased fee: An ownership interest held by a landlord with the rights of use and occupancy transferred by the lease to others. The rights of the lessor (the leased fee owner) and the leased fee are specified by contract terms contained within the lease.

leasehold: The interest held by the lessee (the tenant or renter) through a lease transferring the rights of use and occupancy for a stated term under certain conditions.

market rent: The rental income that a property would probably command in the open market, indicated by the current rents that are either paid or asked for comparable space as of the date of the appraisal.

contract rent: The actual rental income specified in a lease.

similar leasehold interests that the appraiser can analyze. The cost approach is rarely, if ever, applicable to the valuation of a leasehold interest.

Subleasehold or Sandwich Interests

Normally a tenant is free to sublease all or part of a property, but many leases require that the landlord's consent be obtained. A sublease is an agreement in which the tenant in an existing lease conveys to a third party the interest that the lessee enjoys (the right of use and occupancy of the property) for part or all of the remaining term of the lease. In a sublease, the original lessee is "sandwiched" between a lessor and a sublessee (see Figure 5.5). The original lessee's interest has value if the contract rent is less than the rent collected from the sublessee. Subleasing does not release the lessee from the obligations to the lessor defined in the lease agreement. A sublease may affect all the parties, including the owner of the leased fee interest, and such arrangements are common and increasingly upheld by the courts.

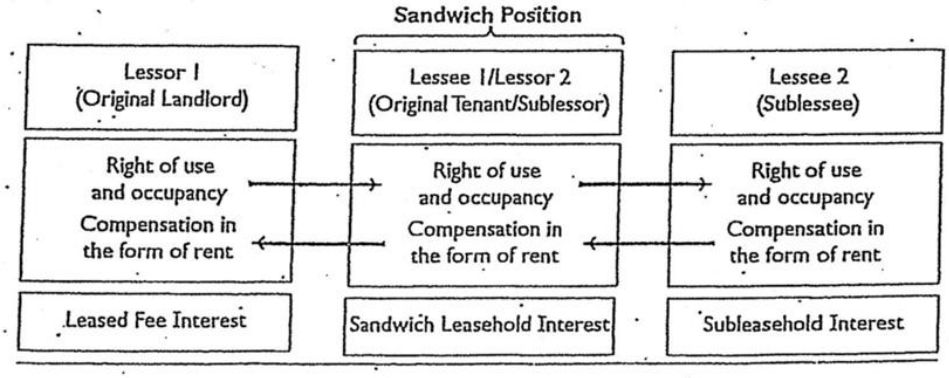
A lease contract may contain a provision that explicitly forbids subletting. Without either the right to sublet or a term that is long enough to be marketable, a leasehold position cannot be transferred and, therefore, has no market value. Furthermore, the value of the leased fee interest would likely be diminished in this case because a lessee who no longer has need of the leased premises and is not allowed to sublease the space is likely to default on the lease.

sandwich lease: A lease in which an intermediate or sandwich leaseholder is the lessee of one party and the lessor of another. The owner of the sandwich lease is neither the fee owner nor the user of the property; he or she may be a leaseholder in a chain of leases excluding the ultimate sublessee.

sublease: An agreement in which the lessee in a prior lease conveys the right of use and occupancy of a property to another, the sublessee.

A tenant under a sublease may not have any of the rights of the leasehold interest under the original lease contract. It is also possible that the holder of the

Figure 5.5 Sandwich Position in a Sublease Transaction



(129th General Assembly)
(Amended Substitute House Bill Number 487)

AN ACT

To amend sections 7.10, 7.16, 9.34, 102.02, 103.05, 105.41, 109.57, 109.572, 109.801, 119.032, 121.04, 121.08, 121.083, 121.084, 122.07, 123.01, 123.011, 123.07, 123.09, 123.10, 123.101, 123.13, 123.14, 123.15, 123.152, 123.17, 123.21, 123.48, 123.77, 124.04, 124.06, 124.11, 124.12, 124.14, 124.231, 124.241, 124.25, 124.26, 124.27, 124.30, 124.31, 125.082, 125.14, 126.14, 135.35, 140.01, 140.03, 140.05, 140.08, 145.01, 145.012, 149.43, 151.01, 152.18, 152.24, 153.01, 153.011, 153.013, 153.02, 153.04, 153.06, 153.07, 153.08, 153.09, 153.11, 153.12, 153.14, 153.16, 153.17, 153.502, 153.503, 153.53, 154.01, 167.04, 173.14, 173.21, 173.23, 173.26, 173.27, 173.391, 173.394, 173.40, 173.42, 173.45, 173.46, 185.01, 185.02, 185.03, 185.05, 185.06, 185.07, 185.09, 185.12, 306.04, 306.36, 306.55, 313.121, 313.122, 313.16, 329.01, 329.40, 329.41, 329.42, 329.43, 329.44, 329.45, 329.46, 330.04, 339.091, 340.03, 340.05, 340.091, 705.18, 749.04, 749.05, 749.18, 901.54, 924.51, 955.16, 955.26, 991.02, 1121.23, 1155.03, 1163.05, 1315.141, 1317.05, 1321.37, 1321.53, 1321.531, 1322.03, 1322.031, 1345.05, 1501.04, 1502.01, 1502.02, 1502.03, 1502.04, 1502.05, 1502.06, 1502.12, 1502.99, 1503.012, 1503.43, 1506.42, 1509.071, 1509.36, 1533.10, 1541.26, 1551.33, 1555.02, 1555.03, 1555.04, 1555.05, 1555.06, 1571.14, 1707.08, 1707.391, 1724.03, 1733.47, 1751.01, 1751.02, 1751.13, 1761.26, 1901.06, 1901.18, 1907.13, 1909.11, 1923.01, 1923.02, 1923.061, 1923.15, 2151.33, 2151.412, 2151.86, 2152.121, 2152.22, 2301.01, 2301.03,

appropriate credentials. to act as a qualified project manager.

(3) The tax commissioner, beginning two years after the effective date of the enactment of this section by H.B. 487 of the 129th general assembly, shall not include any person that has not designated an officer or employee, with the appropriate credentials, to act as a qualified project manager on a list generated by the commissioner for either of the following purposes:

(a) To assist county auditors in selecting a person to do all or any part of the work necessary to the performance of the auditor's duties as assessor of all real property under section 5713.01 of the Revised Code;

(b) To assist the commissioner in the consideration of whether to approve or disapprove the auditor's application requesting authority to employ an appraisal firm or individual appraiser.

Sec. 5713.03. The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of the fee simple estate, as if unencumbered, of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon and the current agricultural use value of land valued for tax purposes in accordance with section 5713.31 of the Revised Code, in every district, according to the rules prescribed by this chapter and section 5715.01 of the Revised Code, and in accordance with the uniform rules and methods of valuing and assessing real property as adopted, prescribed, and promulgated by the tax commissioner. ~~He~~ The auditor shall determine the taxable value of all real property by reducing its true or current agricultural use value by the percentage ordered by the commissioner. In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor ~~shall~~ may consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. However, the sale price in an arm's length transaction between a willing seller and a willing buyer shall not be considered the true value of the property sold if subsequent to the sale:

(A) The tract, lot, or parcel of real estate loses value due to some casualty;

(B) An improvement is added to the property. Nothing in this section or section 5713.01 of the Revised Code and no rule adopted under section 5715.01 of the Revised Code shall require the county auditor to change the true value in money of any property in any year except a year in which the tax commissioner is required to determine under section 5715.24 of the Revised Code whether the property has been assessed as required by law.

The county auditor shall adopt and use a real property record approved by the commissioner for each tract, lot, or parcel of real property, setting forth the true and taxable value of land and, in the case of land valued in accordance with section 5713.31 of the Revised Code, its current agricultural use value, the number of acres of arable land, permanent pasture land, woodland, and wasteland in each tract, lot, or parcel. ~~He~~ The auditor shall record pertinent information and the true and taxable value of each building, structure, or improvement to land, which value shall be included as a separate part of the total value of each tract, lot, or parcel of real property.

Sec. 5719.13. Taxes assessed on the shares of stock of a dealer in intangibles shall be a lien on such shares from the first day of January in each year until they are paid. Each dealer in intangibles shall collect the taxes due from the owners of such shares and ~~pay~~ remit the same to the tax commissioner, who shall accept the remittance on behalf of the treasurer of state. The remittance shall be made payable to the treasurer of state and shall be made in the form prescribed by the commissioner. Any dealer in intangibles who fails to pay said taxes as provided in this section shall be liable by way of penalty for the gross amount of the taxes due from all the owners of shares, and for an additional amount of one hundred dollars for each day of delay in the payment of said taxes.

A dealer in intangibles who pays ~~to the treasurer of state~~ the taxes assessed upon its shares in the hands of its shareholders, as provided in this section, may deduct the amount thereof from dividends or distributions that are due or thereafter become due on such shares, and shall have a lien on the shares of stock and all funds belonging to such shareholders in its possession, or which come into its possession, for reimbursement of such tax paid on account of the shareholders, with legal interest. Such lien may be enforced in any appropriate manner.

Sec. 5725.14. (A) As used in this section and section 5725.15 of the Revised Code:

(1) "Billing address" of a customer means one of the following:

(a) The customer's address as set forth in any notice, statement, bill, or similar acknowledgment shall be presumed to be the address where the customer is located with respect to the transaction for which the dealer issued the notice, statement, bill, or acknowledgment.

(b) If the dealer issues any notice, statement, bill, or similar acknowledgment electronically to an address other than a street address or post office box address or if the dealer does not issue such a notice, statement, bill, or acknowledgment, the customer's street address as set forth in the records of the dealer at the time of the transaction shall be presumed

Upon receipt of the application and after consideration of it, the Tax Commissioner shall determine if the applicant meets the qualifications set forth in this section, and if so shall issue an order directing that the property be placed on the tax-exempt list of the county and that all unpaid taxes, penalties, and interest for every year the property met the qualifications for exemption described in section 5709.07 or 5709.08 of the Revised Code be abated. If the Tax Commissioner finds that the property is not now being so used or is being used for a purpose that would foreclose its right to tax exemption, the Tax Commissioner shall issue an order denying the application.

If the Tax Commissioner finds that the property is not entitled to tax exemption and to the abatement of unpaid taxes, penalties, and interest for any of the years for which the current or prior owner claims an exemption or abatement, the Tax Commissioner shall order the county treasurer of the county in which the property is located to collect all taxes, penalties, and interest due on the property for those years in accordance with law.

The Tax Commissioner may apply this section to any qualified property that is the subject of an application for exemption pending before the Tax Commissioner on the effective date of this section, without requiring the property owner to file an additional application. The Tax Commissioner also may apply this section to any qualified property that is the subject of an application for exemption filed on or after the effective date of this section and on or before twelve months after that effective date, even though the application does not expressly request abatement of unpaid taxes, penalties, and interest.

SECTION 757.51. The amendment by this act of section 5713.03 of the Revised Code applies to the first tax year, after tax year 2012, to which division (A) or (B) of section 5715.24 of the Revised Code applies in the county.

SECTION 757.61. The General Assembly hereby declares that the intent of the amendment by this act of section 5739.02 of the Revised Code is to clarify the law as it existed prior to the amendment by this act of that section.

SECTION 806.10. The items of law contained in this act, and their applications, are severable. If any item of law contained in this act, or if any

(129th General Assembly)
(Amended Substitute House Bill Number 510)

AN ACT

To amend sections 122.17, 122.171, 122.85, 145.114, 145.116, 149.311, 150.01, 150.07, 150.10, 715.013, 742.114, 742.116, 1311.85, 1311.86, 1311.87, 1311.88, 3307.152, 3307.154, 3309.157, 3309.159, 5505.068, 5505.0610, 5703.052, 5703.053, 5703.70, 5707.03, 5709.76, 5711.22, 5713.03, 5725.02, 5725.14, 5725.16, 5725.26, 5725.33, 5733.01, 5733.02, 5733.021, 5733.06, 5747.01, 5747.98, 5751.01, 5751.011, 5751.012, and 5751.98, to enact sections 5701.12, 5726.01 to 5726.04, 5726.041, 5726.05 to 5726.08, 5726.10, 5726.20, 5726.21, 5726.30 to 5726.33, 5726.36, 5726.40 to 5726.43, 5726.50 to 5726.57, 5726.98, 5726.99, 5747.65, and 5751.54 of the Revised Code, and to repeal Section 757.51 of Am. Sub. H.B. 487 of the 129th General Assembly to impose a new tax on financial institutions, effective January 1, 2014, to provide that such institutions and dealers in intangibles are no longer subject to the corporation franchise tax or dealers in intangibles tax after 2013, to require dealers in intangibles that are not owned by a financial institution to pay the commercial activity tax after 2013 except for "small dollar lenders," which will become subject to the new financial institutions tax, to make changes to the law regarding commercial real estate broker liens, to require county auditors to account for the impact of police powers and other governmental actions in the valuation of real property, and to accelerate the application of provisions of Am. Sub. H.B. 487 of the 129th General Assembly

taxation shall be listed and assessed at the following percentages of true value in money:

(1) For tax year 2005, twenty-five per cent of true value;

(2) For tax year 2006, eighteen and three-fourths per cent of true value;

(3) For tax year 2007, twelve and one-half per cent of true value;

(4) For tax year 2008, six and one-fourth per cent of true value;

(5) For tax year 2009 and each tax year thereafter, zero per cent of true value.

(H)(1) For tax year 2007 and thereafter, all personal property used by a telephone company, telegraph company, or interexchange telecommunications company shall be listed as provided in this chapter and assessed at the following percentages of true value in money:

(a) For tax year 2007, twenty per cent of true value;

(b) For tax year 2008, fifteen per cent of true value;

(c) For tax year 2009, ten per cent of true value;

(d) For tax year 2010, five per cent of true value;

(e) For tax year 2011 and each tax year thereafter, zero per cent of true value.

(2) The property owned by a telephone, telegraph, or telecommunications company shall be apportioned to each appropriate taxing district as provided in section 5727.15 of the Revised Code.

(I) During and after the tax year in which the assessment rate equals zero per cent, the property described in division (E), (F), (G), or (H) of this section shall not be listed for taxation.

(J) Divisions (E), (F), (G), and (H) of this section apply to the property of a person described in divisions (E)(3) ~~to (10), (4), and (5)~~ of section 5751.01 of the Revised Code. Division (J) of this section does not prevent the application of the exemption of property from taxation under section 5725.25 or 5725.26 of the Revised Code.

Sec. 5713.03. The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of the fee simple estate, as if unencumbered but subject to any effects from the exercise of police powers or from other governmental actions, of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon and the current agricultural use value of land valued for tax purposes in accordance with section 5713.31 of the Revised Code, in every district, according to the rules prescribed by this chapter and section 5715.01 of the Revised Code, and in accordance with the uniform rules and methods of valuing and assessing real property as adopted, prescribed, and promulgated by the tax commissioner. The auditor shall

determine the taxable value of all real property by reducing its true or current agricultural use value by the percentage ordered by the commissioner. In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor may consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. However, the sale price in an arm's length transaction between a willing seller and a willing buyer shall not be considered the true value of the property sold if subsequent to the sale:

(A) The tract, lot, or parcel of real estate loses value due to some casualty;

(B) An improvement is added to the property. Nothing in this section or section 5713.01 of the Revised Code and no rule adopted under section 5715.01 of the Revised Code shall require the county auditor to change the true value in money of any property in any year except a year in which the tax commissioner is required to determine under section 5715.24 of the Revised Code whether the property has been assessed as required by law.

The county auditor shall adopt and use a real property record approved by the commissioner for each tract, lot, or parcel of real property, setting forth the true and taxable value of land and, in the case of land valued in accordance with section 5713.31 of the Revised Code, its current agricultural use value, the number of acres of arable land, permanent pasture land, woodland, and wasteland in each tract, lot, or parcel. The auditor shall record pertinent information and the true and taxable value of each building, structure, or improvement to land, which value shall be included as a separate part of the total value of each tract, lot, or parcel of real property.

Sec. 5725.02. ~~The~~ For report years prior to 2014, the cashier or other principal accounting officer of each bank, the secretary or other principal accounting officer of each other incorporated financial institution, and the manager or owner of each unincorporated financial institution shall return to the department of taxation between the first and second Mondays of March, annually, a report exhibiting in detail, and under appropriate heads, the resources and liabilities of such institution at the close of business on the thirty-first day of December next preceding.

The report of each financial institution shall also show the aggregate balances of the taxable deposits of its depositors in each county in which the institution maintained an office for the receipt of deposits, at the end of business on the day fixed by the tax commissioner pursuant to section 5725.05 of the Revised Code. The report shall show also the names and

5733.01, 5733.02, 5733.021, 5733.06, 5747.01, 5747.98, 5751.01, 5751.011, 5751.012, and 5751.98 of the Revised Code are hereby repealed.

SECTION 3. That section 757.51 of Am. Sub. H.B. 487 of the 129th General Assembly is hereby repealed.

SECTION 4. The amendment by this act of division (E) of section 5751.01 and sections 5751.011 and 5751.012 of the Revised Code applies to tax periods beginning on or after January 1, 2014 except for a taxpayer that is a corporation or any other person directly or indirectly owned by one or more insurance companies subject to the tax imposed by section 5725.18 or Chapter 5729. of the Revised Code. For such taxpayers, the amendment by this act of division (E) of section 5751.01 and sections 5751.011 and 5751.012 of the Revised Code applies to tax periods beginning on or after January 1, 2013.

SECTION 5. (A) The Tax Commissioner shall not assess or hold liable for the failure to report or pay the tax imposed by section 5751.02 of the Revised Code for any tax periods ending before January 1, 2013, a corporation or any other person directly or indirectly owned by one or more insurance companies that are subject to the tax imposed by section 5725.18 or Chapter 5729. of the Revised Code, provided the corporation, but not the other person or persons, so owned by the insurance company or companies reported and paid the tax imposed by section 5733.06 of the Revised Code and not the tax imposed by section 5751.02 of the Revised Code for taxable periods before January 1, 2013.

(B) For the purposes of this section, division (E)(8)(a),(b), or (c) of section 5751.01 of the Revised Code as that section applied to tax periods ending before January 1, 2013, for a corporation or any other person directly or indirectly owned by one or more insurance companies that are subject to the tax imposed by section 5725.18 or Chapter 5729. of the Revised Code, shall apply in determining whether a person is directly or indirectly owned.

SECTION 6. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Mark C. Flanders

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 26 day of December, A. D. 20 12.

Secretary of State.

File No. 186 Effective Date March 27, 2013

Ohio Constitution [The 1851 Constitution with Amendments to 2015]

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XII.02 Limitation on tax rate; exemption

No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value, except that laws may be passed to reduce taxes by providing for a reduction in value of the homestead of permanently and totally disabled residents, residents sixty-five years of age and older, and residents sixty years of age or older who are surviving spouses of deceased residents who were sixty-five years of age or older or permanently and totally disabled and receiving a reduction in the value of their homestead at the time of death, provided the surviving spouse continues to reside in a qualifying homestead, and providing for income and other qualifications to obtain such reduction. Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

(Adopted November 6, 1990).

(Amended, effective July 1, 1975; HJR No.59.)

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