

OHIO BOARD OF TAX APPEALS

Parma City School District,)	CASE NO. 2006-M-454
Board of Education,)	
)	(REAL PROPERTY TAX)
Appellant,)	
)	ORDER
vs.)	
)	(Disapproving Stipulation)
Cuyahoga County Board of Revision, the)	
Cuyahoga County Auditor and the)	
M.J. Properties of Northern Ohio LLC,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant-	Brindza McIntyre & Seed LLP Robert A. Brindza 111 Superior Avenue, Suite 1025 Cleveland, Ohio 44113
For the County- Appellees	William D. Mason Cuyahoga County Prosecuting Attorney Tim Kollin Assistant Prosecuting Attorney 1200 Ontario Street Cleveland, Ohio 44113
For the Appellee- Property Owner	M.J. Properties of Northern Ohio, LLC 4784 Westminster Lane Broadview Heights, Ohio 44147

Entered March 2, 2007

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

This matter is before the board upon a stipulation filed by the representatives of the Parma City School District Board of Education (“BOE”) and the Cuyahoga County Board of Revision (“BOR”). The matter seeks to resolve a notice of appeal filed by the BOE on April 21, 2006 from a decision, dated March 24, 2006,

wherein the BOR determined the value of certain real property located in the Seven Hills taxing district of Cuyahoga County. As is apparent from the face of the stipulation, the property owner, M.J. Properties of Northern Ohio, LLC (“M.J. Properties”), has not entered an appearance in this matter, nor has it agreed to the valuations agreed upon by the BOE and BOR.

It is also apparent from a review of the statutory transcript before this board that M.J. Properties did not exercise its right to participate before the BOR. After the BOE filed its original complaint, the BOR provided notice to the property owner. S.T., Ex. C. That notice clearly informed M.J. Properties of its right to file a counter-complaint with the BOR. On March 24, 2006, the BOR informed the BOE and the property owner of its decision to increase the value of the subject property for tax year 2005 only, and not for tax year 2004. S.T., Ex. F. A copy of a postal return receipt addressed to “MJ Properties of Northern Ohio,” signed by “Joseph H. Esnt”¹ also appears in the record. S.T., Ex. F.

The BOE, dissatisfied with the determination made by the BOR, appealed the matter to this board. A copy of the letter sent by the BOR notifying M.J. Properties also appears in the statutory transcript as Exhibit G. Despite the record of notice to the property owner, it has not sought to participate in this matter.

During the pendency of the appeal with this board, the BOE and the BOR have come to a meeting of the minds regarding value. According to the

stipulation received, the BOE and the BOR have agreed that an increase is proper for the 2004 tax year, but not to the sale price. The BOE and the BOR have agreed that, as of tax lien date January 1, 2005, the value of the subject property should be equal to the sale price. The BOE and the BOR have submitted a stipulation to this effect, fully informing the board that the property owner has not participated in the settlement of this matter.

The question before this board, then, is whether a settlement should be accepted when the property owner has not participated either before the BOR or before this board. As is the practice of the board, we have provided notice to the property owner of the filing of the notice of appeal (Letter from Administrator), notice of a mediation conference (Letter from Assignment Commissioner), and notice of a hearing scheduled to be held in this matter (Letter from Assignment Commissioner). Notwithstanding the notices, M.J. Properties has made no appearance or contact with the board, following the same pattern developed before the BOR.

“A stipulation cannot be used against a party who has not agreed thereto because, as to the non-agreeing party, it is not a stipulation and, therefore, it is not usable against him.” *Burdge v. Bd. of Cty. Commrs.* (1982), 7 Ohio App.3d 356, at 358. While M.J. Properties has not participated in this matter from its inception, the statutory scheme relating to ad valorem tax valuation presents special protections for the property owner. R.C. 5715.19(B) requires a board of revision to provide notice of

¹ The last name of the signer is illegible.

a complaint seeking a change of greater than \$17,500 to the owner. R.C. 5715.19(C) requires notice of the hearing on the complaint to be directed to the property owner even if the owner has not been “made a party to the action” under R.C. 5715.19(B). R.C. 5715.12 requires a board of revision to give notice and opportunity to be heard to the owner prior to an increase valuation. R.C. 5715.20 requires notice of the board of revision’s decision to be certified to the owner. Finally, the property owner is given two avenues of appeal – one to this board pursuant to R.C. 5717.01 and one to the court of common pleas pursuant to R.C. 5717.05.

These legislative protections were the basis for the Ohio Supreme Court’s holding in *Columbus Apartments Assoc. v. Franklin Cty. Bd. of Revision* (1981), 67 Ohio St.2d 85. In that appeal, the court concluded that a property owner was an indispensable party to a real property valuation proceeding. The court further held that the owner’s right to appeal a board of revision determination was not dependent upon the owner having filed a complaint before that body.

Because of the protections afforded an owner, this board cannot conclude that a settlement of the appeal may be had without the owner, even if, as is here the case, the owner opts not to participate. Therefore, the matter will be scheduled for hearing in the ordinary course of the board’s business.

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