

Board of Education of	)	
Cincinnati School District,	)	
	)	Case No. 96-J-158
Appellant,	)	
	)	(REAL PROPERTY TAX)
vs.	)	
	)	DECISION AND ORDER
Board of Revision of	)	
Hamilton County,	)	
Joseph Reis, Trustee,	)	
City of Cincinnati,	)	
	)	
Appellees.	)	

APPEARANCES:

For the Appellant	-	Wood & Lamping David C. DiMuzio 2500 Cincinnati Commerce Center 600 Vine Street Cincinnati, Ohio 45202
For the Board of Revision	-	Thomas J. Scheve Assistant Prosecuting Attorney 125 East Court Street Suite 300 Cincinnati, Ohio 45202
For Joseph Reis, Trustee	-	Aronoff, Rosen & Stockdale Mark D. Schraffenberger 1600 Star Bank Center 425 Walnut Street Cincinnati, Ohio 45202
For the City of Cincinnati	-	Mark C. Vollman Dotty Carman Assistant City Solicitors Room 214, City Hall 801 Plum Street Cincinnati, Ohio 45202

Entered June 30, 1997

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

The Board of Tax Appeals is considering this matter pursuant to a notice of appeal filed by the Cincinnati School District Board of Education. ("Appellant") Appellant has

appealed from a decision of the Hamilton County Board of Revision ("BOR") which determined the value of the subject real property for tax year 1993. The subject property is located in the city of Cincinnati and is identified on the auditor's records as parcel no. 145-1-314-02. The value determined by the auditor is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	0	0
Building	\$2,600,000	\$910,000
Total	\$2,600,000	\$910,000

The value determined by the BOR is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	0	0
Building	\$ 864,500	\$302,580
Total	\$ 864,500	\$302,580

In the notice of appeal appellant has alleged that the correct value is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	0	0
Building	\$2,600,000	\$910,000
Total	\$2,600,000	\$910,000

The matter has been submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified by the BOR, a motion and memoranda filed by the Appellant, a responsive memorandum filed by the city of Cincinnati, and the evidence adduced at the hearings conducted herein.

The subject property is located in the Convention

Place Mall and consists of three floors of retail store space. The Convention Place Mall also includes a commercial office tower. The Mall was constructed over real property owned by the city of Cincinnati pursuant to a contract and lease of air rights. The subject property at the time of filing of the complaint before the BOR was in the possession of Joseph Reis, Trustee pursuant to an agreement and assignment of air rights. The lease of air rights, and the agreement and assignment of air rights is of record in the offices of the Hamilton County Recorder, at Lease Book 346, pages 1205, et seq., and Lease Book 348 at pages 400 et seq., respectively. With notice to counsel, copies of the air lease and the assignment to the Trustee were provided to the Board and are included in the record. At the time of the creation of the air lease, the Hamilton County Auditor divided the parcel into three separate tax parcels, one of which containing the retail store space is the subject of this appeal.

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<sup>1</sup> For the reasons which follow the Board of Tax Appeals concludes that the motion to dismiss is not well taken.

As the Cincinnati city solicitor properly points out in the memorandum, the Muirfield Case concerned an issue of valuation of property unencumbered by the property owners' association deed restrictions; and the Court affirmed the rationale in Alliance Towers Ltd. v. Stark Cty. Bd. of Revision (1988), 37 Ohio St.3d 16. Muirfield did not address any issue involving jurisdiction of either the BOR or the Board of Tax Appeals over a complainant holding air rights under a lease agreement. Nor was the Court concerned

with the propriety of the auditor creating separate tax parcels to reflect separate interests in the real property. The Supreme Court has recognized that separate estates or interests in air rights may be created and owned by different entities. In Columbus Bd. of Edn. v. Tracy (1995), 73 Ohio St.3d 75, the

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conveyance by quit claim deed of air rights for seven floors to a commercial enterprise did not affect the charitable exemption enjoyed by Franklin County over the land and the first three floors occupied by the Grant Medical Center.

The Supreme Court has also indicated that it will not be bound by an auditor's numbered parcels but value of real property may be dependent upon its potential use as an economic unit. Park Ridge Co. v. Franklin Cty. Bd. of Revision (1987), 29 Ohio St.3d 12.

The Supreme Court has held most recently that taxpayers have standing to seek a decrease in the valuation of real property if they are the party affected, i.e., one upon whom the decrease will have a material effect because it will reduce taxes, within the purview of R.C. 5715.13. Middleton v. Cuyahoga Cty. Bd. of Revision (1996) 74 Ohio St.3d 228. In earlier cases, such as, Trebmal Constr., Inc. v. Cuyahoga Cty. Bd. of Revision (1986), 29 Ohio App. 3d 312, the Court held that a taxpayer holding a long-term ground lease which required it to pay the real estate taxes had standing to file a decrease complaint with the Board of Revision. Moreover, the Court stated, "as the tax board noted, this complainant 'is the true party in interest.'" In Park Investment Co. v. Bd. of Revision of Cuyahoga Cty. (1962), 115 Ohio App. 523, the Court held that the holder of a 99-year lease, renewable forever, is the proper party to file an appeal to the Court of Common Pleas from an adverse ruling of a County Board of Revision involving the valuation of such property. In Name Brand Furniture Warehouse, Inc. v. Cuyahoga Cty. Bd. of Revision (1987), 41 Ohio App. 3d 47, the Court held that in an appeal to the Court of Common Pleas, a subtenant could substitute the landowner as the real party in interest, where the landowner authorized the subtenant to challenge the tax in the landowner's name.

Similarly, this Board has allowed holders of long term renewable leases to file property tax reduction complaints. Upper Arlington City Schools v. Franklin Cty. Bd. of Revision (Nov. 5, 1993), B.T.A. No. 91-G-1673, unreported. In Charles F. Schiear, Jr., Trustee and Kenwood Plaza Limited Partnership v. Hamilton Cty. Bd. of Revision (Aug. 14, 1992), B.T.A. No. 90-K-1577, unreported, we determined that a lessee has standing to bring an appeal to this Board when authorized to do so by express provisions in the lease agreement. We stated:

"Lazarus filed this appeal as the lessee and agent of the appellant, in accordance with the express provisions of its lease agreement. By virtue of such lease agreement, Lazarus may be deemed a taxpayer and stands in the stead of the record title owner. As such, Lazarus has standing and properly initiated an appeal, and may be a party."

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In Sutton Grove Limited Partnership Tradition Living Communities, Inc. v . Hamilton Cty. Bd. of Revision (Mar. 19, 1993), B.T.A. No. 90-G-1261, unreported, this Board allowed the holder of the leasehold improvements to perfect an appeal challenging valuation to this Board. The county had sought to have the appeal dismissed because it did not challenge the "total valuation" of the parcel as required by R.C. 5715.19(A). See also , Meyers v. Montgomery Cty. Bd. of Revision (Feb. 10, 1988), B.T.A. No. 85-D-762, unreported, where the holder of a long term lease was allowed to perfect an appeal to this Board on behalf of the owner-lessors.

The separate interests in the property were voluntarily entered into between the city of Cincinnati, owner of the land, and the lessee of the air rights for the development and use of the Convention Place Mall. The Trustee as a successor to the developer has a separate interest in the retail space in the Convention Place Mall. The Auditor properly separated the property into three tax parcels to conform with these three different economic interests.

Upon consideration of all of the foregoing and the applicable law, the Board of Tax Appeals finds that the BOR had jurisdiction of the complaint filed in this matter and further that this Board has jurisdiction of the appeal from the BOR's decision and determination of value.

It is therefore ORDERED that the motion of the Cincinnati Board of Education be, and the same is hereby de nie ohiosearchkeybta .

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It is further ORDERED the this appeal be scheduled for an evidentiary hearing to determine value of the subject property.