

OHIO BOARD OF TAX APPEALS

Meijer, Inc.,)	CASE NO. 98-M-671
)	
Appellant,)	(Real Property Tax)
)	
vs.)	ORDER
)	
Clermont County Board of)	(Finding Jurisdiction)
Revision, Clermont County)	
Auditor and the West Clermont)	
Local School District)	
Board of Education,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant-

Annrita S. Johnson
Fred Siegel Co., L.P.A.
3001 Bethel Road, Suite 208
Columbus, Ohio 43220

For the County
Appellees-

Donald W. White
Clermont County Prosecuting Attorney
By: Allan Lee Edwards
Assistant Prosecuting Attorney
Clermont County Courthouse
270 Main Street
Batavia, Ohio 45103

For the Appellee-
Board of
Education

David C. DiMuzio
Wood & Lamping LLP
2500 Cincinnati Commerce Center
600 Vine Street
Cincinnati, Ohio 45202-2409

Entered June 04, 1999

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

This matter comes to be considered by the Board of Tax Appeals upon a “Motion to Dismiss,” filed by appellee West Clermont Local School District Board of Education (“BOE”). Through that motion, the BOE seeks a dismissal of the above captioned appeal on the ground that the complaint filed with the Clermont County Board of Revision (“BOR”) failed to comply with R.C. 5715.19(A)(2).

A brief procedural history is in order. On March 21, 1997, appellant, Meijer, Inc. (“Meijer”), filed a complaint against the valuation of a certain parcel located in Clermont County for tax year 1996. At that time, the Auditor had assessed the value of Parcel No. 41-31-05C-044 at a total taxable value of \$4,137,460. Meijer challenged that value, asserting that the correct total taxable value should have been \$2,275,000.

According to discussions held at the BOR hearing, Meijer purchased the subject property in 1993 and commenced construction sometime thereafter. As of January 1, 1996, the property was only partially completed. In resolving the 1996 tax year, the BOR reduced value to account for the partial completion. The BOR’s value determination was appealed to this Board and is currently pending as B.T.A. Case No. 97-D-1114.

Construction was completed sometime during the 1997 tax year. As a result, the Clermont County Auditor increased the values assessed for that year to reflect the completed construction. (S.T., Exh. “F,” p. 18) It was after the Auditor increased valuation that Meijer filed its complaint challenging the value for 1997. (S.T., Exh. “A”)

The relevant interim period for Clermont County covered 1996, 1997 and 1998. At the BOR hearing, counsel for the BOE urged that body to dismiss the 1997 complaint before it, because that complaint failed to identify any of the statutory reasons set forth in R.C. 5715.19(A)(2) which would have permitted a second filing within a triennial period. That statute provides:

“No person, board, or officer shall file a complaint against the valuation or assessment of any parcel that appears on the

tax list if it filed a complaint against the valuation or assessment of that parcel for any prior tax year in the same interim period, unless the person, board, or officer alleges that the valuation or assessment should be changed due to one or more of the following circumstances that occurred after the tax lien date for the tax year for which the prior complaint was filed and that the circumstances were not taken into consideration with respect to the prior complaint:

“(a) The property was sold in an arm’s length transaction, as described in section 5713.03 of the Revised Code;

“(b) The property lost value due to some casualty;

“(c) Substantial improvement was added to the property;

“(d) An increase or decrease of at least fifteen per cent in the property’s occupancy has had a substantial economic impact on the property.”

Through the motion currently before this Board, the BOE renews its claims and relies on *Columbia Toledo Corp. v. Lucas Cty. Bd. of Revision* (1996), 76 Ohio St.3d 361. In that case, the Supreme Court held that a board of revision is deprived of jurisdiction to hear a second complaint in the same interim period when a complainant fails to allege one of the four circumstances set forth in R.C. 5715.19(A)(2).

While the citation of law is sound, the applicability to the facts in the above captioned matter is not. In *Columbia Toledo Corp.*, the property owner filed two complaints within an interim period on a single valuation assessment by an auditor. In contrast, in the present appeal, the Auditor adjusted value during the interim period.

While an auditor must assess property within his county within statutorily prescribed periods, he is permitted to correct the value of a particular parcel within his jurisdiction at any time. R.C. 5713.01, R.C. 5715.33, R.C. 5715.34. To balance the

equities, the General Assembly has given those persons interested in a parcel's value the ability to challenge the auditor's assessments. R.C. 5715.19. It would jeopardize the legislative plan to approve a statutory scheme which permits an auditor to revalue property but precludes a property owner or other interested party from challenging the auditor's actions.

In *Bd. of Edn. of the Berea City School Dist. v. Cuyahoga Cty. Bd. of Revision* (June 14, 1996), B.T.A. Nos. 94-G-1343 through 1348, unreported, the Board considered the effect of a second-filed complaint within a single triennial when an auditor had modified a plat, splitting some parcels and consolidating others. The values of the original parcels had previously been challenged through the filing of two complaints. One year later, after the consolidation, a new parcel's value was challenged. In addressing the claim that the parcel had previously been subjected to review by the board of revision, this Board held:

“The property owner argues that none of the four referenced circumstances [delineated by R.C. 5715.19(A)(2)] exists in these cases, and therefore the BOR had no jurisdiction to consider the complaints. The argument begs the question. The issue to be determined is whether R.C. 5715.19(A)(2) applies to these cases. We find that it does not. R.C. 5715.19(A)(2) applies only when multiple complaints were filed in an interim period which involve the same parcels and/or the same valuation, as discussed more fully below.

“R.C. 5715.19(A)(2) states that no person, board, or officer shall file a complaint against the valuation of any parcel if it filed a complaint against the valuation of that parcel for any prior tax year in the same interim period. In the present cases, the valuations were not the same, ***. The Auditor changed the values from 1991 to 1992; and the BOR properly determined that it had jurisdiction to consider the owner's complaints and revised the values of the various parcels. ***.”

(Emphasis in original.)

While the facts differ, the reasoning applies. In this appeal, the Clermont County Auditor increased value of a single parcel for the second year of a triennial. Notwithstanding the fact that the property owner filed a complaint for the first year of the triennial, the assessment which it now challenges is a new assessment not previously considered by the BOR. Therefore, the exceptions listed in R.C. 5715.19(A)(2) do not apply as that portion of the statute is not applicable.

The BOE's motion to dismiss is not well-taken. The matter will be set for merit hearing in the ordinary course of the Board's business.