[Cite as *Hess Ohio Devs., L.L.C. v. Belmont Cty. Bd. of Revision*, 2020-Ohio-4729.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
BELMONT COUNTY

HESS OHIO DEVELOPMENTS, LLC ET AL.

v.

BELMONT COUNTY BOARD OF REVISION ET AL.

OPINION AND JUDGMENT ENTRY
Case Nos. 19 BE 0029, 19 BE 0030, 19 BE 0031

Administrative Appeal from the
Ohio Board of Tax Appeals of Belmont County, Ohio
Case Nos. 2016-2673, 2016-2674, 2016-2675, 2016-2676, 2016-2677, 2016-2678, 2016-2679, 2016-2680, 2016-2681, 2016-2682, 2016-2690, 2016-2691, 2016-2692, 2016-2693, 2016-2694, 2016-2695, 2016-2697, 2016-2698, 2016-2700, 2017-1803, 2017-1804, 2017-1806, 2017-1807, 2017-1808, 2017-1809, 2017-1810, 2017-1812, 2017-1813, 2017-1814, 2017-1815, 2017-1816, 2017-1817, 2017-1818, 2017-183, 2017-184, 2017-1844, 2017-1845, 2017-1846, 2017-1847, 2017-1848, 2017-1849, 2017-185, 2017-1850, 2017-1851, 2017-1852, 2017-1853, 2017-1854, 2017-1855, 2017-1856, 2017-1857, 2017-1858, 2017-1859, 2017-186, 2017-1860, 2017-187, 2017-188, 2017-189, 2017-190, 2017-191, 2017-192, 2017-193, 2017-194, 2017-195, 2017-196, 2017-197, 2017-198, 2017-199, 2017-200, 2017-201, 2017-2081, 2017-2126, 2017-2128, 2017-2129, 2017-2130, 2017-2131, 2017-2132, 2017-2133, 2017-2187, 2017-2188, 2017-2189, 2017-2190, 2017-2191, 2017-2192, 2017-2193, 2017-2194, 2017-2198, 2017-2199

BEFORE:
David A. D'Apolito, Cheryl L. Waite, Carol Ann Robb, Judges.

JUDGMENT:
Vacated and Dismissed.

Atty. Nicholas M.J. Ray, Atty. Steven L. Smiseck, Atty. Lauren M. Johnson, Vorys, Sater Seymour and Pease, LLP, 52 East Gay Street, Columbus, OH 43215, for Appellant Hess Ohio Developments, LLC and

Atty. Stephen K. Hall, Atty. Richard C. Farrin, Zaino Hall & Farrin, LLC, 41 South High Street, Suite 3600, Columbus, OH 43215, for Appellants CNX Gas Company, LLC and Ascent Utica Minerals, LLC and

Atty. Kelley A. Gorry, Rich & Gillis Law Group, LLC, 6400 Riverside Drive, Suite D, Dublin, OH 43017, for Cross-Appellant Harrison Hills Schools Board of Education and

Atty. Gary W. Smith, Smith Law Firm, 316 South Main Street, P.O. Box 599, Woodsfield, OH 43793-0599, for Cross-Appellant Union Local Schools Board of Education and

Atty. Jonathan T. Brollier, Bricker & Eckler, LLP, 100 South Third Street, Columbus, OH 43215, for Cross-Appellant Bellaire Local Schools Board of Education and

Atty. Christian M. Williams, Atty. Samantha A. Vajskop, Pepple & Waggoner, Ltd., Crown Centre Building, 5005 Rockside Road, Suite 260, Cleveland, OH 44131-6808, for Cross-Appellants Switzerland of Ohio Local School District Board of Education and Barnesville Exempted Village School District Board of Education and

Atty. Anthony L. Ehler, Vorys, Sater Seymour and Pease, LLP, 52 East Gay Street, P.O. Box 1008, Columbus, OH 43216-1008, for Amicus Curiae Ohio Oil and Gas Association (supporting Hess Ohio Developments, CNX Gas Company, LLC and Ascent Utica Minerals, LLC).

Dated: September 28, 2020

D'APOLITO, J.

{¶1} Appellants/Cross-Appellees Hess Ohio Development LLC ("Hess"), CNX Gas Company LLC ("CNX"), and Ascent Utica Minerals, LLC ("Ascent") (collectively "subsurface owners"), and Appellees/Cross-Appellants, Barnesville Board of Education, Switzerland of Ohio Local School District, Bellaire Local School District, Harrison Hills City School District, and Union Local School District (collectively "school districts") appeal the decision of the Board of Tax Appeals ("BTA"), in these administrative appeals to the Board of Revision ("BOR"), filed pursuant to R.C. 5715.19(A)(1)(a) and (d), challenging the valuation and assessment of certain real property by the county auditor.

{¶2} In order to invoke the jurisdiction of the BOR, a complaint must be filed with the auditor against any of the following determinations for the current tax year on or before the thirty-first day of March of the ensuing tax year or the date of closing of the collection for the first half of real and public utility property taxes for the current tax year, whichever is later:

> (a) Any classification made under section 5713.041 of the Revised Code;
>
> * * *
>
> (d) The determination of the total valuation or assessment of any parcel that appears on the tax list, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code;
>
> * * *

R.C. 5715.19(A)(1).

{¶3} Because the subsurface owners do not challenge the auditor's calculation of the value or assessment of the parcels, but, instead, seek a determination of their ownership rights in the real property, we find that the BOR was without statutory authority to render a decision in the administrative appeals. Accordingly, the decisions of the BOR and the decision of the BTA are vacated and this matter is dismissed for lack of subject matter jurisdiction.

FACTS AND PROCEDURAL HISTORY

{¶4} CNX is a subsidiary of CONSOL Energy Inc. and was created for the sole purpose of oil and gas development. In 2011, Consolidation Coal Company, another subsidiary of CONSOL Energy Inc., conveyed to CNX the subsurface rights in 462 parcels in Belmont County, Ohio.

{¶5} Fourteen deeds conveying the subsurface rights from Consolidation to CNX in 2011 are captioned "Quitclaim Deed," and convey "all Hydrocarbons within and underlying tracts or parcels of land * * * (the "**Mineral Interests**") and "any units or pooling arrangements wherein the minerals are pooled or unitized * * *[and] any wells owned by

Grantor that are located on the property." (Emphasis in original) (2011 Deeds, § 2.2(a)-(d).) "Hydrocarbons" are defined as "oil, gas, and Coalbed Methane and other hydrocarbons (including condensate) produced or processed in association therewith (whether of nor such item is in liquid or gaseous form), or any combination thereof, and any mineral produced in association therewith." (*Id*., § 3.3.)

{¶6} CNX requested that separate parcel numbers be assigned to the subsurface rights for tax purposes. According to CNX and Ascent's merit brief, the separate parcel numbers were created to generate a savings event under the Dormant Mineral Act.

{¶7} Pursuant to Ohio Adm. Code 5703-25-10, the county auditor is required to code each parcel of taxable and exempt real property in accordance with subsection (C). The major use and code number group for taxable mineral interest lands and rights is 200 to 299 included. The specific codes under major use 200 to 299 are:

210 - Coal lands - surface and rights

220 - Coal rights - working interest

230 - Coal rights - separate royalty interest

240 - Oil and gas rights - working interest

250 - Oil and gas rights - separate royalty interest

260 - Other minerals

{¶8} The auditor coded 451 parcels – "260 OTHER MINERALS," and attributed a value of $1,500.00 per acre. The remaining eleven parcels were later assigned separate parcel numbers with the same code and value. The auditor assessed real estate taxes on all of the parcels beginning in Tax Year 2012.

{¶9} In 2012, CNX conveyed to Hess a 50% undivided interest in the subsurface rights in 313 of the parcels, and retained an undivided 50% interest. Pursuant to a joint venture agreement, Hess was responsible for the extraction of oil and gas from the property and CNX for the capital to fund the project.

{¶10} Five deeds conveying the subsurface rights from CNX to Hess are captioned "Mineral Interest Deed," and convey an undivided 50% of "the oil and gas mineral fee interests * * * only insofar as such interests cover all depths within the Utica and Point Pleasant Formation (such 50% of Grantor's interest in such mineral fee interests as so limited, the "**Mineral Interests**"), together with any and all rights, titles and interests of Grantor in and to any units or pooling arrangements whether the Mineral Interest are pooled or unitized." (Emphasis in original)(2012 Deeds, §2.1(a)(1).) The 2012 deeds contain the same definition of "Hydrocarbons" as the 2011 deeds.

{¶11} The Real Property Conveyance Fee Statement of Value and Receipt for each of the 2012 deeds is in the record. In the space provided for the address of the property, the Grantee wrote "oil and gas interest." However, in the auditor's portion of the form, the auditor provided the following description, "Mineral Only* Multiple Parcels." The Residential Review Property Record Cards, which are also in the record, also reflect the "mineral only" designation by the auditor.

{¶12} In the administrative proceedings, Hess and CNX argued that the proper code for each parcel was "270 OIL & GAS RIGHTS." Code 270 is a code introduced by the auditor in 2015, (Andrew Sutak Depo. at 24-25), and appears to correspond to code 240 in the Ohio Administrative Code. The subsurface owners predicated their improper coding argument on the nineteen deeds in the record. They asserted that the deeds conveyed only oil and gas rights, not the rights to other minerals.

{¶13} According to the deposition testimony of the auditor, the owners of the parcels demanded that separate parcel numbers be assigned to the interests. In haste, the auditor relied on "a breakdown of the statutory minerals that [the previous auditor] did sometime over the last 20, 30 years." (*Id.* at 17.) The auditor explained that the calculations had never been updated "because [the auditor's office] had never had a [all mineral deed] before." (*Id.*) He further testified that the "other minerals" valuation was based on various coals, various shales, clays, sand, gravel, and limestone, but did not include oil and gas. (*Id.* at 22.)

{¶14} In 2015, the auditor adopted a written policy regarding oil, gas, and mineral deed parcels. The policy plainly states that oil and gas deeds will have a zero-value parcel created per tract. Further, oil, gas, and mineral deeds will have two parcels created

per tract, one zero-value parcel and one "other mineral" parcel. CNX and Hess assert that the implementation of the auditor's written policy prompted the Tax Year 2015 and 2016 administrative appeals.

{¶15} The auditor's zero-value oil and gas policy is predicated upon longstanding practice in the county, as well as R.C. 5713.051, which provides a methodology for the valuation of unextracted oil and gas reserves. The statutory calculation in R.C. 5713.051 is only to be undertaken with respect to a developed and producing well that has not been the subject of a recent arm's length transaction. R.C. 5713.051(B) & (C).

{¶16} The auditor provided the following explanation of the statute's effect:

> Form 6 basically is the gas and oil extractor's, when they extract, and the company gets the volume of gas and the barrels of oil and the other what they may have here, the blow-offs and things like that, they submit it to the county auditor's office.
>
> From there we have a formula the state sets up and what is still left in the ground from the extraction and from the barrels of oil and gas we come up with an assessed value.

(Andrew Sutak Depo., 28.) The auditor did not issue a tax bill on oil and gas parcels until a Form 6 was supplied. (*Id.* at 34.) It is undisputed that the subsurface owners have not actively developed, extracted, or sold any gas or oil from the parcels.

{¶17} Ohio Adm. Code 5703-25-11, captioned "Valuation of Land," reads, in pertinent part:

> Coal, mineral deposits, oil and gas - Coal and minerals shall be valued in the same manner and on the same price level as other real property. Some of the factors that shall be considered in valuing coal and mineral deposits are the quality and extent of the deposit, the active working area which at current production will be mined in five years, active reserves that will not be worked in five to ten years, inactive reserves that will not be worked after ten years, and mined out or depleted areas.

> Separate oil and gas rights shall be valued in accordance with the annual entry of the tax commissioner in the matter of adopting a uniform formula in regard to valuation of oil and gas deposits in the eighty-eight counties of the state.

Ohio Adm. Code 5703-25-11(I).

THE ADMINSTRATIVE APPEALS

{¶18} Hess (for Tax Year 2015) and then Hess and CNX (for Tax Year 2016), filed complaints with the BOR, a statutorily created board tasked with hearing "complaints relating to the valuation or assessment of real property as the same appears upon the tax duplicate of the then current year." R.C. 5715.11. In the Tax Year 2015 appeal, Hess challenged the auditor's valuation of 313 of the parcels. In the Tax Year 2016 appeal, CNX and Hess challenged the auditor's values for 149 of the parcels. The school districts filed countercomplaints seeking retention of the auditor's valuation.

{¶19} In both appeals, Hess and CNX alleged that they owned only oil and gas rights in the real property, rather than mineral rights in general. They further argued that there could be no taxable value attributed to the oil and gas parcels until the oil and gas was extracted.

{¶20} Hess and CNX both sought corrections to the valuations going back to Tax Year 2012, rather than the current year, based on the alleged miscoding of the parcels, which they characterized as a "clerical error." Pursuant to R.C. 319.35, clerical errors may be corrected by the auditor, however, any error in the listing, valuation, assessment, or taxation of real property other than a clerical error constitutes a fundamental error, which is subject to correction only by the county board of revision as provided by law. The BOR concluded that its statutory authority to amend the valuation of the parcels was limited to the current tax year. The subsurface owners have not challenged that determination in this appeal.

{¶21} The BOR conducted hearings on the complaints and countercomplaints, and ultimately concluded that CNX and Hess owned only oil and gas rights in the real property. In the Tax Year 2015 appeal, the BOR found that the 2012 CNX to Hess deeds

conveyed only oil and gas rights, not other minerals, to Hess. In the Tax Year 2016 appeal, the BOR found that the 2011 Consolidation to CNX deeds conveyed only oil and gas rights, not other minerals, to CNX and Hess.

{¶22} Specifically, in the Tax Year 2015 appeal to which CNX was not a party, the BOR found that 2012 deeds from CNX to Hess "lack[ed] a conveying clause of any other identifiable mineral interest other than the undivided 50% interest in the oil and gas mineral fee interests." (BOR decisions dated November 30, 2016, December 29, 2016, p. 4.) A 2011 Consolidated to CNX deed and a 2012 CNX to Hess deed were admitted into evidence as representative of the relevant deeds. However, the BOR predicated its decision that Hess owned only oil and gas rights in the 313 parcels exclusively on the 2012 CNX to Hess deed. As a consequence, the BTA found that the Hess complaints relative to Tax Year 2015 were well taken.

{¶23} Accordingly, the BOR ordered the auditor to issue a tax credit pursuant to R.C. 5715.22. Believing that Hess had paid the first half of the Tax Year 2015 tax bill, the BOR concluded that Hess was due a credit for one half of the taxes. Finally, and assuming that CNX owned all of the "other minerals," the BOR ordered the auditor to amend the parcels because "CNX is the party responsible for the entire bill for tax year 2015," and ordered the treasurer to "print and send the bills to CNX for those parcels." (*Id*.)

{¶24} The BOR later amended its decision regarding the 2015 tax bill in a letter dated December 29, 2016. The BOR explained that the treasurer had discovered Hess had not paid any real estate taxes on the parcels for Tax Year 2015. As a consequence, the BOR rescinded that part of the decision ordering the auditor to issue a credit to Hess. The BOR also rescinded the part of the decision instructing the treasurer to issue bills to CNX.

{¶25} In the 2016 Tax Year appeal to which both Hess and CNX were parties, the BOR found that the 2011 deeds from Consolidation to CNX "lack[ed] a conveying clause of any other identifiable mineral interest other than interest in the oil and gas mineral." (BOR decision dated September 13, 2017, p. 4.) Thus, the BOR found that "CNX, and ultimately Hess, hold an oil and gas mineral interest, only, in the parcels identified within the Complaint." (*Id*.) As a consequence, the BOR concluded that the complaints filed by

CNX and Hess were well taken. Because CNX had exercised its right to tender zero ($0.00) for Tax Year 2016 pursuant to R.C. 5717.19(E), the BOR concluded that no credit or refund was due.

{¶26} The BOR further observed:

> The [BOR] notes that no party presented any testimony and/or exhibit at the hearing as evidence contesting the $1,500.00 per acre value the Auditor assesses against "other minerals." However, based on the findings of the [BOR] above, the [BOR] finds that the valuation of the assessed minerals is moot for Tax Year 2016 and/or Tax Year 2012-2015.

(*Id.,* p. 7.)

THE BTA APPEAL

{¶27} Hess, CNX, and the school districts appealed the BOR decisions to the BTA. Hess and CNX argued that the BOR erred when it failed to find that the parcels should have been coded 270, rather than 260, in 2011, that the miscoding constituted a clerical error, and that no tax was due from any owner of the parcels from 2011 to 2016.

{¶28} The school districts argued that the BOR and, as a consequence, the BTA, were without jurisdiction to determine the ownership of property rights or to determine the propriety of the auditor's coding of the parcels. In the alternative, the school districts challenged the BOR's legal conclusions that the deeds conveyed only oil and gas rights, and that oil and gas rights have a zero value for tax purposes prior to extraction. In 2018, during the pendency of the BTA appeal, Ascent acquired the real property.

{¶29} The subsurface owners argued that the BOR derived its jurisdiction over the complaints on both R.C. 5715.19(A)(1)(a)("Any classification made under section 5713.041 of the Revised Code") and (A)(1)(d)("The determination of the total valuation or assessment of any parcel that appears on the tax list, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code.") In its June 6, 2019 decision, and in response to the school districts' jurisdictional challenge based on R.C. 5715.19(A)(1)(d), the BTA opined that "the proper characterization of the parcels at issue

may be relevant to an appeal under R.C. 5715.19(A)(1)(d), where it constitutes part of the auditor's total valuation or assessment of the property." (BTA Dec., p. 3.)

{¶30} However, the BTA found that the BOR was without statutory authority to order the auditor to recode the parcels pursuant to R.C. 5715.19(A)(1)(a). The BTA wrote:

> Although there was some discussion about the applicability of R.C. 5719(A)(1)(a) as a complaint against the auditor's classification of the parcels made under R.C. 5703.041, this code section is not applicable. As the [school districts] correctly pointed out, the auditor's classification under R.C. 5703.041 is limited to two categories, (1) residential/agricultural or (2) nonresidential/agricultural real property, the latter of which includes minerals or rights to minerals. This board has previously declined to engage in further determinations regarding the "sub type" of property within these two classifications. *Fairview Park City School District Bd. of Ed. v. Cuyahoga County Board of Revision* (April 8, 2014), BTA No. 2011-4331; *LTC Properties Inc. v. Licking Cty. Bd. Of Revision* (June 7, 2011), BTA No 2008-A-1010. In the case, there is no request that the subject parcels be valued as residential/agricultural, therefore R.C. 5715.19(A)(1)(a) is irrelevant.

(BTA Dec., at p. 3.)

{¶31} Turning to the merits, the BTA affirmed the BOR's legal conclusion that the parcels were comprised solely of oil and gas rights, but found that R.C. 5713.051 was inapplicable to the 462 parcels at issue in this appeal. The BTA relied upon its "historical reject[ion] [of] the argument that a property is worthless or has a zero value." (*Id.,* at p. 4.) The BTA observed that "[t]his is particularly relevant in the case where there is no dispute as to whether the minerals (oil and gas deposits) are present and available for future production and have some value on the open market." (*Id*., p. 4-5.) Finally, the BTA affirmed the BOR's conclusion that the argument for a tax credit retroactive to Tax Year 2012 based on a clerical error was outside its statutory authority, which is limited to the current tax year.

{¶32} Although the BTA recognized the presumption that the auditor's value was consistent with Ohio law where no evidence is offered to the contrary, it nonetheless rejected the auditor's valuation based on the auditor's testimony that "his valuation was based on the value of other mineral rights that were not a part of the subject parcels." (*Id*., p. 4.) Because there was insufficient evidence in the record from which the BTA could conduct an independent valuation, the BTA remanded the matter to the BOR "to conduct further proceedings in order to determine the true value of the fee simple estate for each parcel as real property." (*Id*., p. 6.) These timely appeals followed.

STANDARD OF REVIEW

{¶33} Challenges to the jurisdiction of a board of revision are a question of law that we review de novo. *Akron Ctr. Plaza, L.L.P. v. Summit Cty. Bd. of Revision*, 128 Ohio St.3d 145, 2010-Ohio-5035, 942 N.E.2d 1054, ¶ 10, citing *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, 871 N.E.2d 1167, ¶ 8. The lack of subject matter jurisdiction cannot be waived, and may be raised at any time, even for the first time on appeal. *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 75, 701 N.E.2d 1002 (1998).

ANALYSIS

CROSS-APPELLANTS HARRISON HILLS, UNION, AND BELLAIRE'S ASSIGNMENTS OF ERROR

(1) The BTA erred in determining that the Belmont County Board of Revision (the "BOR") has jurisdiction pursuant to R.C. 5715.19(A)(1) to consider and determine the ownership of the subject parcels. (June 6, 2019, BTA Decision and Order, p. 3-4).

(2) The BTA erred in determining that the BOR had jurisdiction pursuant to R.C. 5715.19(A)(1) to consider and determine what mineral interests the subject parcels contained (i.e. oil and gas or other mineral interests). (June 6, 2019, BTA Decision and Order, p. 3-4).

(3) The BTA abused its discretion in determining that the BOR had jurisdiction to re-code the subject parcels as oil and gas parcels when the Belmont County Auditor coded the subject parcels as other minerals. (June 6, 2019, BTA Decision and Order, p. 3-4).

(4) The BTA exceeded its jurisdiction in reviewing deeds transferring the subject parcels to Appellants/Cross-Appellees CNX Gas Company, LLC ("CNX") and Hess Ohio Development, LLC ("Hess") and making a legal determination as to what mineral interests were conveyed, and to whom they were conveyed, pursuant to the deeds. (June 6, 2019, BTA Decision and Order, p. 4).

CROSS-APPELLANTS BARNESVILLE AND SWITZERLAND'S ASSIGNMENTS OF ERROR

(1) The BTA erred in affirming that the Belmont County Board of Revision ("BOR") had jurisdiction to consider and determine the question of ownership over the subject parcels. (June 6, 2019, BTA Decision and Order, p. 3-4).

(2) The BTA erred in affirming that the BOR had jurisdiction to consider and determine the scope of ownership interests contained within the subject parcels (i.e., whether the interests in the subject parcels included the rights to oil and gas, rights to other minerals, or both). (June 6, 2019, BTA Decision and Order, p. 3-4).

(3) The BTA erred in affirming that the BOR had jurisdiction to re-code the subject parcels as oil and gas parcels. (June 6, 2019, BTA Decision and Order, p. 3-4).

(4) The BTA exceeded its jurisdiction and erred in interpreting the ownership interests conveyed under the deeds transferring the subject parcels to CNX Gas Company LLC and Hess Developments, LLC. (June 6, 2019, BTA Decision and Order, p. 3-4).

{¶34} County boards of revision are creatures of statute and, as a consequence, are limited to the powers conferred upon them by statute. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 368, 721 N.E.2d 40 (2000), outcome modified on other grounds as noted in *MB West Chester, L.L.C. v. Butler County Bd. of Revision*, 126 Ohio St.3d 430, 2010-Ohio-3781, 934 N.E.2d 928, ¶ 25. "The authority granted to a board of revision by R.C. 5715.01 is to 'hear complaints and revise assessments of real property for taxation.'" *Cincinnati School Dist.*, at 368, 721 N.E.2d 40. Boards of revision are comprised of the county treasurer, county auditor, and a member of the board of county commissioners. R.C. 5715.02.

{¶35} In order to invoke the jurisdiction of the BOR, a complaint must be timely filed with the auditor. When the complaint claims at least $17,500.00 of overvaluation or undervaluation, R.C. 5715.19(B) requires the county auditor to give notice of the filing of the complaint to certain entities. That notification triggers the period within which the notified entity, in this case the school districts, may file a countercomplaint and become a party to the proceedings. *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397, 985 N.E.2d 1243, ¶ 16.

{¶36} R.C. 5715.11 provides that the BOR "shall hear complaints relating to the valuation or assessment of real property as the same appears upon the tax duplicate of the then current year." Further, the BOR "shall investigate all such complaints and may increase or decrease any such valuation or correct any assessment complained of, or it may order a reassessment by the original assessing officer." R.C. 5715.10 provides that the BOR "shall be governed by the laws concerning the valuation of real property and shall make no change of any valuation except in accordance with such laws."

{¶37} The school districts argue that Hess and CNX sought a determination of their ownership rights in the real property at issue in this appeal, which the school districts assert is outside of the BOR's limited statutory jurisdiction to value and assess real property. The school districts further argue that the BTA expressly recognized the BOR's lack of jurisdiction over the alleged miscoding of the parcels, but, nonetheless, affirmed the BOR's de facto re-coding of the parcels from "other minerals" to "oil and gas."

{¶38} The subsurface owners counter that the determination of ownership rights undertaken by the BOR was essential to the BOR's statutory mandate to value and

assess real property. However, they do not cite any case law where a board of revision engaged in the interpretation of a deed in order to amend an auditor's valuation or assessment of real property.

{¶39} A review of Ohio case law reveals that the evidence offered in valuation appeals to boards of revision is a recent arms-length sale of the real property, or, in the absence of such a sale, competing appraisals of the real property. See generally, *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410, 412, 195 N.E.2d 908 (1964); *Conalco, Inc. v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129, 363 N.E.2d 722 (1977); *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶ 11, 100 N.E.3d 362; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, ¶ 18, 17 N.E.3d 537; *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 152 Ohio St.3d 331, 2017-Ohio-8843, ¶ 18, 96 N.E.3d 228. However, in the Tax Year 2015 and 2016 appeals, the subsurface owners do not challenge the auditor's calculation of the value of the other minerals. They offered no evidence to show that the other minerals were overvalued, and did not assert that the auditor's valuation was contrary to the laws concerning the valuation of real property. As a consequence, we find that the complaints did not invoke the BOR's statutory authority to correct an inaccurate calculation of the true value of the parcels.

{¶40} The subsurface owners further argue that the determination of ownership rights in the parcels falls within the BOR's authority to assess real property. In response to the school districts jurisdictional challenge based on R.C. 5715.19(A)(1)(d), the BTA opined that "the proper characterization of the parcels at issue may be relevant to an appeal under R.C. 5715.19(A)(1)(d), where it constitutes part of the auditor's total valuation or assessment of the property." (BTA Dec., p. 3.)

{¶41} The BTA cites *State ex rel. Rolling Hills Local School Dist. Bd. Of Ed. v. Brown Cty. Auditor*, 63 Ohio St.3d 520, 589 N.E.2d 1265 (1992), in which the Ohio Supreme Court held that a school board seeking to challenge the listing of property in the wrong school district has an adequate remedy at law through an appeal to the BOR. *Id.* at 521. The BTA cites *Rolling Hills* to demonstrate the BOR has the power to resolve factual issues that are germane to the assessment of the real property.

{¶42} The subsurface owners cite *United Local Schools Bd. Of Ed. V. Columbiana Cty. Bd. Of Revision* (April 16, 2018), BTA No. 2016-828, in support of their argument that the statutory authority to assess real property includes the determination of ownership rights undertaken by the BOR in this appeal. In *United Local*, the BTA held on reconsideration that a county board of revision has jurisdiction to determine whether property that exists on a parcel is real or personal. The BTA observed:

> Further, we are mindful that R.C. 5715.11 also indicates that a board of revision may correct any assessment complained of, or order a reassessment. The term "assessment" encompasses more than valuation. See, e.g., *State ex rel. Rolling Hills Local School Dist. v. Brown Cty. Auditor*, 63 Ohio St.3d 520 (1992) (assessing includes assigning parcels to taxing districts). Black's Dictionary defines "assessment" as: "In connection with taxation of property, *** to make a valuation and appraisal of property, usually in connection with listing of property liable to taxation, and implies the exercise of discretion on the part of officials charged with duty of assessing, including the listing of inventory of property involved, determination of the extent of physical property, and placing of a value thereon." *Such definition clearly encompasses more than valuation and contemplates that an assessor must also determine what property to value and tax.* By its own terms, therefore, we find that R.C. 5715.11 does not limit a board of revision's authority to review a county auditor's determination that certain items are or are not taxable real property.

(Emphasis added) *United Local, supra*, at *2.

{¶43} While we recognize that the Ohio Supreme Court has broadly interpreted the term "assessment" to include more than valuation, we disagree that the BOR's determination of the ownership of the other minerals in these administrative appeals falls within its statutory authority to assess property. In *Rolling Hills*, the Ohio Supreme Court predicated the BOR's jurisdiction on the auditor's statutorily prescribed duties:

> R.C. 5713.01 authorizes the county auditor to assess all real estate in his county. Under the statute, the auditor views and appraises each lot or parcel and places the correct value of each property on his tax list and on the county treasurer's duplicate.
>
> The auditor prepares the tax list pursuant to R.C. 319.28. On the tax list, he records, inter alia, all the parcels in the county, the names of their owners, and the taxing district in which each parcel is located. According to R.C. 319.30, the auditor, after receiving tax rates from the various taxing authorities, including school boards, determines the taxes to be levied on each parcel and enters this amount on the tax list. On October 1, he delivers one copy, the duplicate, to the treasurer; the treasurer collects taxes per the duplicate. R.C. 319.28 and 323.13. We conclude, after reading these statutes, that assessing real property for taxation includes assigning parcels to taxing districts and recording them accordingly on the tax list.
>
> Moreover, the correct listing of a parcel underlies the integration of the listing function into the assessment process. The listing is important to a taxpayer because rates and, consequently, tax billings change according to the taxing district in which the property is situated. This listing is also important to the school district because the total amount of taxes it is due changes with the number of properties listed as being in its district.

Id. at *521.

{¶44} In Ohio, the resolution of ownership rights in real property is governed by R.C. 5303.01. R.C. 5303.01 reads, in pertinent part, “An action may be brought by a person in possession of real property, by himself or tenant, against any person who claims an interest therein adverse to him, for the purpose of determining such adverse interest.” We have recognized that an action to quiet title is a statutory proceeding that “conclusively determine[s] the allocation of property interests.” *Ochsenbine v. Cadiz*, 166 Ohio App.3d 719, 2005-Ohio-6781, 853 N.E.2d 314, ¶ 13 (7th Dist.). Actions to quiet title fall under the subject-matter jurisdiction of courts of common pleas. *Brown v. Arnholt*, 2016-Ohio-5741,

70 N.E.3d 971, ¶ 24 (5th Dist.), see also *Eckart v. Newman*, 6th Dist. Williams No. WM-18-006, 2019-Ohio-3211, ¶ 10 (municipal courts have no jurisdiction to determine an action to quiet title).

{¶45} Because the subsurface owners predicate their complaints on the assertion that they do not own the other minerals, a quiet title action against the putative owner of the other minerals is required to conclusively determine the ownership of the mineral rights at issue in this appeal. Although the subsurface owners do not claim, but, rather, disclaim an interest in the other minerals, their payment of property taxes on the parcels creates an interest adverse to the putative owner of the other minerals. Because R.C. 5303.01 provides the statutory method for determining real property rights in Ohio, we find that the determination of ownership made by the BOR was beyond its jurisdiction to value and assess real property pursuant to R.C. 5715.19(A)(1)(d).

CONCLUSION

{¶46} In summary, we find that the complaints in these administrative appeals seek a determination of ownership rights in real property. The subsurface owners are required to resolve any dispute involving the allocation of property interests through an action to quiet title in the court of common pleas. Because the BOR exceeded its statutory authority in R.C. 5715.19(A)(1)(d) to value and assess real property when it determined ownership rights in the real property, the decisions of the BOR and the BTA are vacated, and these administrative appeals are dismissed for lack of subject matter jurisdiction.

Waite, P.J. concurs.

Robb, J. concurs.

For the reasons stated in the Opinion rendered herein, the decisions of the BOR and the BTA are vacated, and these administrative appeals are dismissed for lack of subject matter jurisdiction. Costs to be taxed against the Appellants/ Cross-Appellees.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.