

1 Mid-States Terminal, Inc., Appellant and Cross-Appellee, v. Lucas County
2 Board of Revision et al., Appellees and Cross-Appellants.

3 [Cite as *Mid-States Terminal, Inc. v. Lucas Cty. Bd. of Revision* (1996),

4 ____ Ohio St.3d ____.]

5 *Taxation -- Real property -- Board of Tax Appeals' valuation*
6 *unreasonable, when.*

7 (No. 95-1951 -- Submitted April 4, 1996 -- Decided July 24, 1996.)

8 Appeal and Cross-Appeal from the Board of Tax Appeals, No. 93-K-
9 1385.

10 Mid-States Terminal, Inc., n.k.a. Countrymark Cooperative, Inc.
11 ("Mid-States"), owns a grain elevator and associated facilities located along
12 the Maumee River in Toledo, Ohio. The real property consists of twenty-
13 one parcels covering a total area of 19.123 acres, of which parcel No. 18-
14 77207 covers 4.03 acres.

15 Mid-States filed a complaint with the Lucas County Board of
16 Revision ("BOR"), along with an attachment listing the parcel numbers and
17 descriptions of twenty-one parcels. The only parcel for which Mid-States
18 requested a decrease in value was parcel No. 18-77207. The Toledo Board

1 of Education filed a countercomplaint in which it asked that the auditor's
2 valuation be retained. The BOR found that no reduction in value should be
3 made. Mid-States filed an appeal with the Board of Tax Appeals ("BTA").

4 After hearing and considering the opinions of value put forth by the
5 appraisers representing Mid-States and Toledo Board of Education, the
6 BTA accepted the \$6,700,000 valuation presented by Mid-States' appraiser,
7 Dennis E. Vogan. Although Mid-States' notice of appeal to the BTA listed
8 twenty-one parcels of property, the BTA's decision attributed Vogan's
9 \$6,700,000 valuation entirely to parcel No. 18-77207, stating in a footnote:

10 "As previously indicated, the subject property is identified as being
11 comprised of twenty-one parcels in appellant's complaint, notice of appeal
12 and the January 26, 1995 agreement. Vogan's appraisal report, however,
13 indicates that the subject property consists of only twenty parcels. * * * He
14 testified at hearing that he believed the remaining parcel is owned by the
15 Toledo Port Authority and leased to Countrymark. * * * It still remains
16 unclear whether the value opined by Vogan and accepted by this Board
17 should be considered to be the total value of all twenty-one parcels, twenty
18 parcels or the single parcel which is contested. Given that appellant has the

1 burden of demonstrating the value of the property at issue and as the
2 \$6,700,000 is closer to that value claimed by appellant in its notice of
3 appeal and the January 26, 1995 agreement, we have attributed the entire
4 value to parcel number 18-77207.”

5 Mid-States filed a notice of appeal with this court, as did cross-
6 appellants, Toledo Board of Education and the BOR.

7 This cause is now before the court upon appeals as of right.

8 *Stephen Swaim*, for appellant and cross-appellee.

9 *Anthony G. Pizza*, Lucas County Prosecuting Attorney, and *Ralph C.*

10 *Zychowicz*, Assistant Prosecuting Attorney, for appellee and cross-
11 appellant, Lucas County Board of Revision.

12 *Spengler Nathanson* and *Michael W. Bragg*, for appellee and cross-
13 appellant Toledo Board of Education.

14 *Per Curiam*. The decision of the BTA accepted the \$6,700,000
15 valuation put forth by Mid-States’ appraiser Dennis E. Vogan. The BTA
16 applied that valuation to parcel No. 18-77207, thereby leaving the valuation
17 of the other twenty parcels unchanged. However, the BTA itself raised the

1 question of whether the \$6,700,000 value it accepted was applicable to just
2 parcel No. 18-77207 or whether it was applicable to all twenty-one parcels.

3 Mid-States contends that Vogan's opinion of value is applicable to all
4 twenty-one parcels, not just parcel No. 18-77207. Mid-States contends that
5 the values for the twenty parcels (excepting parcel No. 18-77207), plus the
6 land portion of parcel No. 18-77207, are to remain unchanged at
7 \$1,503,970, and that the building valuation for parcel No. 18-77207 should
8 be reduced from \$10,553,400 to \$5,196,030. When added together, the
9 value for the twenty parcels, plus the value of the land and buildings for
10 parcel No. 18-77207, totals \$6,700,000.

11 We have reviewed the entire record, especially Vogan's testimony
12 and appraisal reports, and we agree with Mid-States' contention that
13 Vogan's valuation of \$6,700,000 includes all twenty-one parcels of real
14 property. Appellant's Exhibit A is an appraisal report prepared by Vogan as
15 of the assessment date of January 1, 1992. Appellant's Exhibit B is a
16 written appraisal prepared for Countrymark Cooperative, Inc. as of May 31,
17 1993. In his testimony before the BTA, Vogan explained that he was
18 originally contacted by Mid-States in the summer of 1993 to prepare an

1 appraisal of its Toledo facility for internal purposes. At a later time Mid-
2 States requested Vogan to prepare another written appraisal for its Toledo
3 facilities as of January 1, 1992. In his transmittal letter attached for the
4 January 1, 1992 appraisal, Vogan stated that his May 31, 1993 appraisal was
5 incorporated by reference.

6 A review of Vogan's appraisal reports clearly shows that Vogan's
7 appraisal covers all twenty-one parcels, not just parcel No. 18-77207. In the
8 transmittal letters for both the January 1, 1992 and May 31, 1993 appraisals,
9 Vogan states that his appraisal includes "the property rights of fee simple
10 estate on all owned land and leasehold estate on any leased land." In both
11 appraisals, the site being appraised is described as "19.123 acres more or
12 less, of owned land, includes IRB site, and a small leased tract from port
13 authority." His description of "Property Rights Appraised" in both
14 appraisals states that it "includes the underlying real estate * * * involved in
15 this business." In the cost approach set forth in his May 31, 1993 appraisal,
16 Vogan devotes a page to "Site Valuation." Under the Site Valuation
17 heading, Vogan divides the total acreage of 19.123 acres into three different
18 categories and ascribes a different value per acre to each category. The

1 three categories of real estate values contained in the May 31, 1993
2 appraisal are carried over and incorporated into the cost recap contained in
3 the January 1, 1992 appraisal. In addition, the cost approach section of the
4 May 31, 1993 appraisal describes each tract of land involved. In the “Final
5 Value Estimate” portion of his May 31, 1993 appraisal, Vogan sets forth that
6 the value of the subject property “includes land, buildings, [and]
7 improvements.” In his “Final Market Value Estimate” portion of the
8 January 1, 1992 appraisal, Vogan stated his opinion of “the Market Value
9 (real property only) of the subject property’s land, buildings and
10 improvements.”

11 In his testimony before the BTA, Vogan likewise stated that his
12 appraisal “includes the entire bundle of rights that would be involved in this
13 particular property.” In speaking of his market value estimate he stated that
14 the value was for the “entire property.” Finally, he stated that “[a]gain, it is
15 an appraisal of the entire entity.”

16 When the BTA accepted Vogan’s appraisal without noting any
17 exceptions, it accepted the underlying facts upon which the appraisal was
18 based. The appraisal reports clearly and unequivocally set forth that

1 Vogon's value of \$6,700,000 was for all twenty-one parcels containing
2 19.123 acres, not just a single parcel.

3 In this case, we are not weighing the evidence. The BTA has not
4 rejected any of the testimony or evidence from Vogon cited above. The
5 underlying facts for Vogon's appraisal reports were not challenged.
6 However, for some reason, the BTA ignored or overlooked the contents of
7 the appraisal reports and testimony which we have cited above. A review of
8 the record leaves no doubt that Vogon's appraisal value encompassed all
9 twenty-one parcels of real estate listed on the original complaint. Based on
10 the undisputed basic facts, we hold that the BTA's ultimate conclusion that
11 Vogon's value of \$6,700,000 was meant to apply only to parcel No. 18-
12 77207 is unreasonable. *Ace Steel Baling, Inc. v. Porterfield* (1969), 19 Ohio
13 St.2d 137, 48 O.O.2d 169, 249 N.E.2d 892, and *SFZ Transp., Inc. v.*
14 *Limbach* (1993), 66 Ohio St.3d 602, 613 N.E.2d 1037.

15 CROSS-APPEAL

16 In its response brief, Mid-States argues that appellees have not
17 properly invoked the jurisdiction of this court, due to their failure to comply
18 with R.C. 5717.04. Appellees have filed a motion asking that we strike that

1 portion of Mid-States’ response brief. Although Mid-States did not file a
2 separate motion to dismiss when it questioned jurisdiction, it stated that
3 appellees’ cross-appeal should be dismissed. In *Shawnee Twp. v. Allen Cty.*
4 *Budget Comm.* (1991), 58 Ohio St. 3d 14, 15, 567 N.E.2d 1007, 1009, we
5 stated in a similar situation, “Despite * * * [the] failure to file such a
6 motion, a party cannot waive subject-matter jurisdiction regardless of
7 procedural sins, and we can entertain a subject-matter dismissal motion at
8 this stage.” We therefore treat Mid-States’ response brief raising the
9 question of jurisdiction as a motion to dismiss and deny appellees’ motion
10 to strike it.

11 R.C. 5717.04 requires that a copy of the notice of appeal filed with
12 this court also be filed with the BTA. R.C. 5717.04 also requires that proof
13 of filing of the notice of appeal with the BTA be filed with the court to
14 which the appeal is taken. A review of the BTA’s transcript in this case
15 does not disclose that a copy of appellees’ notice of appeal was filed with
16 the BTA. Likewise, a review of this court’s files does not disclose any
17 proof of filing of appellees’ notice of appeal with the BTA.

1 MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER, COOK

2 and STRATTON, JJ., concur.

3