

Barberton Board of Education

Special Session

September 6, 2011

Admn. Bldg.

President Joe Stefan called the meeting to order at 5:00 p.m.

MEMBERS PRESENT: Russ McCune, Deanne McQuaide, Ron Romich, and Joe Stefan

MEMBERS ABSENT: Dennis Liddle

The Pledge of Allegiance was recited.

Discussion Items

- Opening Day
- Building and Construction Update
- State of the Schools

Executive Session - O.R.C. § 121.22

(286/11) MOTION was made by McQuaide second by Romich to adjourn into executive session to consider the sale of property at competitive bidding, such disclosure would give an unfair competitive or bargaining advantage.

Ayes 4, Stefan, McCune, McQuaide, and Romich

MOTION CARRIED. 4 – 0

Madams McQuaide and Cleary and Messrs. Stefan, Romich, Pendleton, Hall and legal counsel entered into Executive Session at 5:32 p.m. to consider the sale of property at competitive bidding, such disclosure would give an unfair competitive or bargaining advantage.

Mr. Stefan reconvened the Board Meeting at 5:50 p.m.

Treasurer's Business

(287/11) MOTION was made by McQuaide second by Stefan to approve the following Settlement Agreement between the Barberton City School District and JR Engineering.

This Agreement ("Agreement") is made effective as of the ____ day of _____, 2011 by and between JR Engineering, Inc., an Ohio corporation ("JR"), the Summit County Board of Revision ("Board"), Summit County Fiscal Officer ("Fiscal Officer"), Barberton Board of Education ("Barberton"), and Norton Board of Education ("Norton", collectively with the Board, the Fiscal Officer, and Barberton, the "Appellees") with respect to the consolidated Summit County Court of Common Pleas cases CV-2010-10-6881 and CV-2010-11-7610 (collectively, the "Action").

RECITALS:

A. JR has filed two complaints appealing the decisions of the Summit County Board of Revision in Board of Revision Case Nos. 09-312, 09-312A, 09-275, and 09-275A to the Summit County Court of Common Pleas;

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B. Fiscal Officer, Barberton, and Norton each contest the value set forth in JR's tax challenge with respect to the properties at 123 Ninth Street NW, Barberton and 5208 Wooster Road W, Norton (collectively, the "Properties");

C. The parties desire to resolve the matters raised in the Action according to the terms and conditions set forth in this Agreement.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The parties will advise the Court that they have reached an agreement as to the value of the Properties and will ask the Court to schedule a settlement conference. At the settlement conference, the parties will propose to the Court that either (a) it amend its order denying the Appellees' motion to dismiss by adding language indicating that the order is a final, appealable order, or (b) rule on the pending motion for reconsideration and determine that the prior decision denying the Appellees' motion to dismiss was a final, appealable order. If the Court amends its prior order or rules on the pending motion for reconsideration and determines that the prior decision denying the Appellees' motion to dismiss was a final, appealable order, then, within the statutory time permitted, the Appellees may appeal this order to the Court of Appeals, seeking resolution of the jurisdictional issues raised in the motion to dismiss. If the Appellees are dissatisfied with the decision of the Court of Appeals, the Appellees may appeal the matter to the Ohio Supreme Court. JR agrees not to contest or raise the issue whether the order is a final appealable order.

2. In the event that the appeal is ultimately decided in favor of the Appellees that the Court incorrectly determined the jurisdictional issues with respect to service, the matter will be remanded to the lower court for dismissal of the administrative appeals in accordance with the

appellate court's decision. However, in the event that the appeal is ultimately decided in the favor of Appellant, the matter will be remanded to the lower court for further proceedings at which time the parties will sign the stipulation of value set forth in Exhibit A for the Properties and submit the same to the Court for approval. If the Appellees elect not to pursue an appeal, the parties will sign the stipulation of value for the Properties and submit the same to the Court for approval. If, however, the appeal cannot be perfected because the order is not a final, appealable order, then the Appellees may further appeal that decision. In any case, the Appellees will not object and shall permit JR to enter additional testimony and evidence of value if the matter proceeds before the Court of Common Pleas.

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3. The parties agree that they will execute and deliver the stipulation of value described above and more fully set forth in the Exhibit A in accordance with the terms and conditions of this Agreement, reflecting the following values for the parcels in question, for the tax date beginning January 1, 2009 and carrying forward to include the tax year for 2010:

Parcel No.	Current Market Value	%	New Market Value
123 Ninth Street NW, Barberton			
01-08467	\$4,057,990.00	98.92%	\$2,840,010.36
01-08468	\$900.00	0.02%	\$629.87
01-08469	\$4,280.00	0.10%	\$2,995.39
01-08470	\$1,580.00	0.04%	\$1,105.77
01-16076	\$3,430.00	0.08%	\$2,400.51
01-16083	\$33,520.00	0.82%	\$23,459.19
01-16085	\$570.00	0.01%	\$398.92
TOTAL	\$4,102,270.00	100.00%	\$2,871,000.00
5208 Wooster Road W, Norton			
46-01829	\$19,080.00	0.31%	\$16,492.96
46-08068	\$2,298,510.00	36.79%	\$1,986,856.79
46-08069	\$3,929,440.00	62.90%	\$3,396,650.25
TOTAL	\$6,247,030.00	100.00%	\$5,400,000.00

4. This Agreement shall not limit or bar JR from filing a further complaint against valuation of the Properties in the triennium beginning January 1, 2011.

5. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and the parties agree that this Agreement supercedes any prior agreements or understandings, whether verbal or written, relating to the subject matter hereof.

6. Each of the individual parties represent and warrant to the other that he or it has the full right, power, and equal authority to execute, deliver, and perform this Agreement and to consummate the transaction as contemplated herein.

7. This Agreement may be amended, modified, or superseded and any of the terms, covenants, representations, warranties, or conditions hereof may be waived, but only by a written instrument executed by the party against which such amendment or modification is to be enforced. No waiver of any nature, in any one or more circumstances, shall be deemed to be or construed as a further or continued waiver of any condition or any breach of any other terms, covenants, representations, or warranties in this Agreement.

8. The Summit County Court of Common Pleas presiding over the Action shall have authority to enforce and/or resolve any disputes arising from this Agreement.

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EXHIBIT A

Stipulation of Value

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

JR ENGINEERING, INC.,) CASE NO. CV-2010-10-6881
Appellant-Plaintiff,) (B.O.R. Case Nos. 09-312 and 09-312A)
-vs-) CASE NO. CV-2010-11-7610
) (B.O.R. Case Nos. 09-275 and 09-275A)
SUMMIT COUNTY BOARD OF) JUDGE COSGROVE
REVISION, et al.,)
Appellees-Defendants.) STIPULATION

The parties hereby agree and stipulate that the parcels set forth below had the new fair market value set forth below as of January 1, 2009.

Parcel No.	Current Fair Market Value		New Fair Market Value
123 Ninth Street NW, Barberton			
01-08467	\$4,057,990.00		\$2,840,010.36
01-08468	\$900.00		\$629.87
01-08469	\$4,280.00		\$2,995.39
01-08470	\$1,580.00		\$1,105.77
01-16076	\$3,430.00		\$2,400.51
01-16083	\$33,520.00		\$23,459.19
01-16085	\$570.00		\$398.92
TOTAL	\$4,102,270.00		\$2,871,000.00
5208 Wooster Road W, Norton			
46-01829	\$19,080.00		\$16,492.96
46-08068	\$2,298,510.00		\$1,986,856.79
46-08069	\$3,929,440.00		\$3,396,650.25
TOTAL	\$6,247,030.00		\$5,400,000.00

The Summit County Fiscal Officer is hereby ordered to modify and update its records based upon the foregoing, effective January 1, 2009. Any credits or refund due to the Appellant for overpayment of taxes based on the prior higher values for 2009 to date shall be repaid to the

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Appellant as soon as practicable. If the Appellant is delinquent in the payment of 2009 or 2010 taxes, then the amounts of any credit or refund will be applied first to those delinquent accounts.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Ayes 4, McCune, McQuaide, Romich, and Stefan

MOTION CARRIED. 4 – 0

(288/11) MOTION was made by McQuaide second by Stefan to approve the following Resolution to proceed with property auctions for Highland, Santrock and Norton Avenue Properties.

WHEREAS, the Board is the owner of the Highland Property, Santrock Property, and Norton Avenue Property, located in the City of Barberton, County of Summit, State of Ohio, the legal descriptions of which are set forth more fully in Exhibits A (Highland Property), B (Santrock Property), and C (Norton Avenue Property), copies of which are attached hereto and incorporated herein; and

WHEREAS, the Highland Property and Santrock Property are suitable for use as classroom space; and

WHEREAS, neither the Highland Property, Santrock Property, nor the Norton Avenue Property is needed for school purposes and each property exceeds Ten Thousand Dollars in value; and

WHEREAS, Section 3313.41 of the Ohio Revised Code governs the disposal of real property owned by the Board in its corporate capacity that exceeds in value Ten Thousand Dollars; and

WHEREAS, the Board is in need of funds to pay for capital projects and proceeds from the sale of each property would help provide such funds.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Board finds that each property, each of which exceeds Ten Thousand Dollars in value, is no longer needed for school purposes and should be sold according to Ohio law.
2. In accordance with Section 3313.41(G)(1) of the Ohio Revised Code, when the Board decides to dispose of real property suitable for classroom space, it shall first offer that property for sale to the governing authorities of any start-up community schools established under Chapter 3314 of the Ohio Revised Code located within the territory of the Barberton City School District, at a price not higher than the appraised fair market value of the property.
3. There being no start-up community schools within the territory of the Barberton City School District, the Board is not required to offer each property for sale to the governing authorities of any start-up community schools.
4. Each property, therefore, shall be sold in the manner provided by Section 3313.41 of the Ohio Revised Code, subject to the terms of this Resolution, at public auction, after giving at least thirty days notice (“Notice”) of the auction by publication in a newspaper of general circulation, or by posting notices in five of the most public places in the Barberton City School District and such other places as the Superintendent deems appropriate.

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5. The sale of each property shall be made according to the following terms and conditions, and such other terms and conditions that are consistent with this Resolution and deemed appropriate by the Superintendent:
 - a. The sale of each property shall be at public auction at a time and place designated by the Superintendent in the Notice;
 - b. The sale of each property shall not be final until accepted by the Board through resolution, with notice sent to the successful bidder by the Treasurer;
 - c. The Board reserves the right to reject any and all bids;
 - d. At the completion of the auction, the highest conforming bidder shall deliver to the Board a purchase agreement complying with the bidding materials prescribed by the Superintendent, together with cash or certified/cashier's check payable to the Board in the amount of Twenty-Five Thousand Dollars as a security deposit for faithful performance in the event the Board accepts the bid; and
 - e. In the event the successful bidder completes the obligations under the Agreement, the Board will transfer each property to the bidder via a quit claim deed, without representations or warranties concerning each property, in its AS IS, WHERE IS WITH ALL FAULTS condition at the time of closing.
6. The Superintendent is authorized and directed to advertise the sale of each property in a newspaper of general circulation or by posting notices in five of the most public places in the Barberton City School District and such other places as the Superintendent deems appropriate. The notice shall substantially conform to the Notice attached hereto and incorporated herein as Exhibit D, but may be subject to modifications as the Superintendent sees fit.
7. The Superintendent is further authorized to engage an auctioneer and appraiser at the usual and customary charges in order to conduct an auction of each property. The Superintendent is further authorized to take any other actions that are appropriate to carrying out the auction and sale of each property.
8. All formal actions of the Board relating to the adoption of this Resolution were taken in open meeting and all deliberations resulting in such formal action were in meetings open to the public and in compliance with Ohio law.

Ayes 4, McCune, McQuaide, Romich, and Stefan
MOTION CARRIED. 4 – 0

The approval of the Decker Head Start Handbook for the 2011-12 school year was tabled.

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Adjournment

(289/11) MOTION was made by McQuaide second by Romich to adjourn the meeting at 6:05 p.m.

Ayes 4, Romich, Stefan, McCune, and McQuaide
MOTION CARRIED. 4 – 0

Signed 9/26/11

President

Signed 9/26/11

Treasurer