

OHIO BOARD OF TAX APPEALS

Canton City School District Board of Education,)	CASE NOS. 97-K-1664,
)	97-K-1665
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	ORDER
)	
Stark County Board of Revision, the Stark County Auditor and Columbia CSA/HS Greater Canton Area Healthcare System LP,)	(Overruling Motion to Dismiss)
)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	-	Robert A. Brindza Kelley, McCann and Livingstone 3500 BP Tower 200 Public Square Cleveland, Ohio 44114-2302
For the County Appellees	-	Robert D. Horowitz Stark County Prosecuting Attorney 110 Central Plaza, Suite 510 Canton, Ohio 44702
For the Appellee Property Owner	-	Gene Barnhart Black, McCuskey, Souers and Arbaugh 1000 United Bank Plaza 220 Market Avenue South Canton, Ohio 44702-2116

Entered: February 11, 2000

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

These appeals are now considered by the Board of Tax Appeals upon the motion of the appellee property owner, Columbia CSA/HS Greater

Canton Area Healthcare System LP (“Columbia”), requesting that these appeals be dismissed. The basis for the motion is as follows:

“Taxpayer-Appellee moves this Board for an Order dismissing the appeal[s] of the Canton City School District Board of Education for the reason that the record in this case demonstrates that at the date of said appeal[s] neither Appellant nor its attorney had good ground to support the appeal.”

Referring to the proceedings conducted before the Stark County Board of Revision (“BOR”), Columbia points out that it offered the testimony and appraisal report of an appraiser who opined a value, as of January 1, 1996, of \$39,000,000. The Stark County Auditor (“Auditor”) retained an appraiser who testified, subsequently confirming such testimony in a written report, that the subject property had a value of \$41,000,000. At the hearing before the BOR, appellant presented no evidence. Ultimately, the BOR determined that the subject property had a true value of \$41,000,000. Appellant then appealed to this Board claiming that the subject property had a value of \$62,750,000. Citing common law principles and Civ. R. 11,¹ Columbia now argues that appellant’s appeals should be dismissed since at the time of their filing, appellant had no factual basis for challenging the decision of the BOR. Columbia insists that appellant is only now,

¹ Initially, we point out that this Board is not bound by the Ohio Civil Rules of Procedure. See, e.g., *Midwest Enterprises v. Cuyahoga Cty. Bd. of Revision* (Feb. 6, 1995), Cuyahoga App. Nos. 67203 and 67565, unreported; *Sovran Self Service Assoc. v. Cuyahoga Cty. Bd. of Revision* (Nov. 15, 1999), Cuyahoga App. Nos. 74777, et seq., unreported. In any event, Civ. R. 11, to which Columbia directs this Board’s attention, applies to various pleadings filed in Ohio common pleas courts. Although again not binding upon this Board, see Ohio App. R. 1(A) and *Cleveland Electric Illuminating Co. v. Lake Cty. Bd. of Revision* (Sept. 26, 1996), B.T.A. No. 96-K-381, et

through discovery on appeal, attempting to ascertain facts which would support its claimed value.

Appellant makes several arguments in response to Columbia's motion. With regard to its common law arguments, appellant initially responds that the only restrictions placed upon a right to appeal a decision of a county board of revision to the Board of Tax Appeals are those which are jurisdictional in nature. Since the Board of Tax Appeals is a "creature of statute," it may only dismiss an appeal which is jurisdictionally defective.

Nevertheless, if this Board were to conclude it has authority to dismiss an appeal because it is found to have been filed without good cause, appellant maintains that to dismiss its appeals at the current stage of proceedings would be premature since it has not yet completed discovery, presented evidence at hearing or briefed the legal and factual issues presented. Despite Columbia's assertion that appellant has no basis for pursuing these appeals, appellant refers to the fact that its value claim is not entirely unsupported but is instead the value originally assigned the subject property by the Auditor. Finally, appellant argues its ability to present evidence at the BOR hearing was impaired by Columbia's failure to provide a copy of its appraiser's report to appellant until the BOR hearing had commenced, thereby precluding appellant from any meaningful opportunity to respond to Columbia's value claim.

Footnote contd. _____
seq., unreported, to the extent any analogy could be drawn, one would presumably look to the Ohio Rules of Appellate Procedure which do not contain a provision similar to Civ. R. 11.

As pointed out by appellant, “[t]he Board of Tax Appeals is a creature of statute and is limited to the powers with which it is thereby invested.” *Steward v. Evatt* (1944), 143 Ohio St. 547, paragraph one of the syllabus. Pursuant to R.C. 5717.01, a party aggrieved by a decision of a county board of revision is given a statutory right to appeal that decision to this Board. In order to do so, the party must have standing and must file its appeal with both the county board of revision and this Board within thirty days of the mailing of the decision by the county board of revision. Provided the minimal requirements imposed by R.C. 5717.01² have been satisfied, the appeal is sufficient to invoke this Board’s jurisdiction.³ Having invoked this Board’s jurisdiction, the appellant has the burden to demonstrate an evidentiary or legal basis which would support the relief requested through its appeal. See *Western Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340, 342. An appellant is given the opportunity to meet this burden by either presenting competent and probative evidence at hearing or having its appeal considered upon the existing record and its legal arguments.

In the present case, Columbia has not asserted any statutory deficiencies with respect to appellant’s notices of appeal. Despite Columbia’s

² In this context, it is worthy to note the important distinction which exists in appeals from county boards of revision and appeals from final determinations of the Tax Commissioner. In the case of the latter, R.C. 5717.02 not only imposes filing requirements similar to those found in R.C. 5717.01, but goes a step further, requiring that the appealing party “specify the errors therein complained of ***.”

³ While an appeal may be subject to dismissal, it is only after an opportunity to be heard has been extended to the appellant. See Ohio Adm. Code 5717-1-18 and 5717-1-14(1). Cf. *LCL Income Properties v. Rhodes* (1995), 71 Ohio St.3d 652 (holding that a county board of revision may dismiss a complaint for failure to prosecute).

assertions to the contrary, there exists no statutory basis which would require appellant to demonstrate a ground for exercising its statutory right to file an appeal with this Board. See fn. 2. Nevertheless, as indicated above, appellant shall be required to meet the burdens imposed upon it by statute and case law. Based upon the forgoing, Columbia's motion to dismiss is not well-taken and it is therefore overruled.