

G. Frederick Pierce-Ruhland,)	CASE NO. 97-K-787
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	DECISION AND ORDER
)	
Ashtabula County Board of)	
Revision and the Ashtabula)	
County Auditor,))	
)	
Appellees.)	

APPEARANCES:

For the Appellant	-	G. Frederick Pierce-Ruhland, <u>Pro Se</u> 4352 Fox Road Kingsville, Ohio 44048
For the County Appellees	-	Thomas L. Sartini Ashtabula County Prosecuting Attorney By: Robert L. Herman Assistant Prosecuting Attorney 25 West Jefferson Street Jefferson, Ohio 44047-1092

Entered September 4, 1998

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

This cause and matter is before the Board of Tax Appeals as a result of a notice of appeal filed on July 10, 1997 by appellant, G. Frederick Pierce-Ruhland. Appellant appeals a decision of the Ashtabula County Board of Revision ("BOR"), mailed on June 11, 1997, in which it determined that the subject property had a total taxable value of \$160,720 as of tax lien date January 1, 1996.¹

¹It must be noted that within the statutory transcript certified to this Board, the Ashtabula County Auditor has indicated that the BOR received a copy of appellant's notice of appeal on July 14, 1997. Attached as an exhibit to the statutory transcript is a copy of appellant's notice of appeal which bears a "received" date of July 14, 1997. See Ex. G. If July 14, 1997 was indeed considered the

The subject property is located in the Kingsville Township taxing district and appears in the records of the Ashtabula County Auditor ("Auditor") as parcel numbers 27-003-00-013-00 and 27-003-00-013-01. The first of these parcels, having a total area of approximately 176 acres, is unimproved. The Auditor's property record card indicates that approximately 135 acres of this parcel have been devoted to forestry. The second of these parcels, consisting of approximately 40 acres, is improved with a single family residence. The Auditor initially determined that the subject property had the following true and taxable values as of tax lien date:

date on which appellant filed his notice of appeal with the BOR, this Board would be without jurisdiction to consider the present appeal as his notice would have been untimely filed. See R.C. 5717.01. See, also, Hope v. Highland Cty. Bd. of Revision (1990), 56 Ohio St.3d 68. However, in the cover letter to Ex. G, as well as in his cover letter to his notice of appeal filed with this Board, appellant indicated that, under date of July 10, 1997, he was sending his notice of appeal to the BOR by certified mail. R.C. 5717.01 specifically provides:

"If notice of appeal is filed by certified mail, the date of the United States postmark placed on the sender's receipt by the postal employee to whom the notice of appeal is presented shall be treated as the date of filing."

Since appellant utilized certified mail as the manner by which to file his notice of appeal with this Board, and since no evidence was presented which would controvert appellant's representation that he was filing in the same manner with the BOR, we find that appellant has invoked this Board's jurisdiction in this appeal. Cf. Consolidated Freightways, Inc. v. Summit Cty. Bd. of Revision (1986), 21 Ohio St.3d 17.

Parcel No. 27-003-00-013-00

<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>	
Land	\$ 84,200	Land	\$ 29,470
Building	<u>-0-</u>	Building	<u>-0-</u>
Total	\$ 84,200	Total	\$ 29,470

Parcel No. 27-003-00-013-01

<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>	
Land	\$ 23,100	Land	\$ 8,090
Building	<u>126,100</u>	Building	<u>44,140</u>
Total	\$149,200	Total	\$ 52,230

Thereafter, the BOR reduced the values of the property as follows:

Parcel No. 27-003-00-013-00

<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>	
Land	\$ 77,300	Land	\$ 27,060
Building	<u>-0-</u>	Building	<u>-0-</u>
Total	\$ 77,300	Total	\$ 27,060

Parcel No. 27-003-00-013-01

<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>	
Land	\$ 21,600	Land	\$ 7,560
Building	<u>126,100</u>	Building	<u>44,140</u>
Total	\$147,700	Total	\$ 51,700

Appellant, through his notice of appeal, asserts that the total market value of both parcels is \$181,260, which has a corresponding total taxable value of approximately \$63,441. This reflects appellant's claim that the true value of the subject property should be reduced from that determined by the BOR in an amount equal to \$43,740.

Although both appellant and the county appellees were accorded an opportunity to present additional evidence at a hearing

before this Board, the county appellees elected to waive their attendance at said hearing. Counsel for the county appellees did, however, at the time of the filing of the waiver, submit a written memorandum for this Board's consideration. Appellant was in attendance at this Board's hearing and presented evidence, in the form of his testimony and documents, in support of his appeal. Following the conclusion of the hearing, appellant submitted an outline of his arguments, as well as several additional documents to which reference was made during hearing.² Accordingly, we now proceed to consider this appeal based upon appellant's notice of appeal, the statutory transcript certified by the Auditor, the parties' written statements and the evidence presented at hearing.

In an appeal filed pursuant to R.C. 5717.01, there exists no presumption that the values found by a county board of revision are correct. Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision (1994), 68 Ohio St.3d 336, 337, and Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision (1994), 68 Ohio St.3d 493, 495. Nevertheless, an appellant bears the burden of presenting evidence in support of the value which has been asserted. Western Industries, Inc. v. Hamilton Cty. Bd. of Revision (1960), 170 Ohio St. 340, 342. Once competent and probative evidence of value has been presented, then the other

²After a review of appellant's testimony and the presiding examiner's ruling at hearing that copies of documents to which appellant referred could be submitted following the evidentiary hearing, we do not consider these materials to be subject to being stricken under the authority of Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision (1996), 76 Ohio St.3d 13, 16. Nevertheless, due to the nature of the materials submitted, we accord such documentary evidence the weight to which they may be entitled.

parties to the appeal have the burden of providing evidence which rebuts that of the appellant. Id.; Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision (1988), 37 Ohio St.3d 318, 319. While this Board may ultimately find that a property has the same value as that previously determined by a county board of revision, either because the evidence supports such a conclusion or the appellant has failed to prove otherwise, see, e.g., Westlake Med. Investors, L.P. v. Cuyahoga Cty. Bd. of Revision (1996), 74 Ohio St.3d 547, 549; National Church Residence v. Licking Cty. Bd. of Revision (1995), 73 Ohio St.3d 397; WJJK Investments, Inc. v. Licking Cty. Bd. of Revision (1996), 76 Ohio St.3d 29, 31, such a conclusion will be the result of an independent, de novo, determination which is predicated upon the preponderance of the evidence.

Appellant has asserted several bases for challenging the BOR's determination, each of which we will address in turn.³ Initially, appellant indicated that in 1992 he purchased the subject property, consisting of both parcels identified in his notice of appeal, for \$284,000. Appellant presented this Board with an "appraisal" suggesting that the property had a "timber market value," as of April 25, 1991, of \$100,000 to \$125,000. Appellant then testified that in 1994 forty-four percent of the timber was sold from the property for \$86,700. It is therefore

³At this Board's hearing, appellant indicated that he is no longer challenging the value assigned the parcel which is improved with his residence, i.e., parcel no. 27-003-00-013-01. Instead, his testimony and the documentary materials which he presented at hearing are focused upon the value assigned to parcel no. 27-003-00-013-00.

appellant's position that the removal of this timber resulted in a reduction in the subject's value. As additional support for this claim, appellant presented an appraisal of parcel number 27-003-00-013-00 which indicated that it had a value of \$78,000.

Pursuant to R.C. 5713.03, a county auditor is to consider a "qualifying" sale to reflect the true value of property for tax purposes. Focusing upon only one of the conditions imposed in order for a sale to be considered a "qualifying" sale,⁴ R.C. 5713.03 requires that the sale occur "within a reasonable length of time, either before or after the tax lien date ***." In Cuturic v. Cuyahoga Cty. Bd. of Revision (July 16, 1993), B.T.A. No. 92-R-329, unreported, this Board commented on those aspects which may render a sale either "recent" or "remote":

"Webster's New World Dictionary, 3rd Ed. (1961), defines 'recent' as 'of or belonging to a period of time relatively near; not remote.' The key word in the foregoing definition seems to be 'relatively,' since our consideration of a number of cases wherein arm's length sales are examined for real property valuation purposes, establishes that the term 'recent' is viewed as relative. Thus, a time which might be considered recent under one state of facts might not be so regarded under another or different factual situation. That is, whether a sale is 'recent' for real estate tax valuation purposes depends on the surrounding circumstances in each case and not upon some arbitrary or absolute notion about what

⁴Additional requirements for a sale to be considered a "qualifying" sale when valuing real property for ad valorem tax purposes is that it be actual and arm's-length. See, e.g., Conalco v. Bd. of Revision (1977), 50 Ohio St.2d 129, paragraph one of the syllabus. Other than appellant's testimony that he purchased the property on May 26, 1992 for \$284,000, we have no other information regarding the nature of this sale.

constitutes a recent sale when valuing real property." Id. at 7.

In the present case, we have no reliable evidence as to whether or not the market in which the subject property is located has remained stable or changed throughout the three and one-half years since appellant acquired it. Furthermore, the "timber appraisal," which suggests that in April 1991 the property had a timber value in a range of \$100,000 to \$125,000, provides little assistance in determining the property's overall value as of tax lien date since it: (1) appraised only one aspect of the property; (2) reflected an appraisal date of more than one year prior to appellant's purchase of the property and almost five years prior to the tax lien date in issue; and (3) is conclusory in nature with no explanation as to how the opinion of value was derived.

The appraisal which appellant submitted at hearing is likewise not persuasive when an attempt is made to determine the subject's value. First of all, the cover page to the appraisal indicates an "as of" date of January 18, 1998, while the appraisal itself reflected an opinion of value as of December 31, 1997. The appraiser who prepared this appraisal did not testify before this Board and therefore this inconsistency remains unexplained. However, an additional flaw with this appraisal, using either date, is the fact that it does not reflect an opinion of value as of the critical date in issue, i.e., January 1, 1996.

In Freshwater v. Belmont Cty. Bd. of Revision (1997), 80 Ohio St.3d 26, the Supreme Court addressed the importance of valuing a property as of the tax lien date:

"The BTA rejected Baker's procedure and refused to assign any weight to his opinion of true value. The BTA stated that '[t]he mere fact that the tax lien date is approximately midway between two appraisal dates does not mean that the 1994 value must also be between the two appraisals.'

"In rejecting Becker's opinion of true value, the BTA cited a passage from *The Appraisal of Real Estate* (10 Ed.1992), 75, which states that because market forces are constantly changing, 'an estimate of value is considered valid only for the exact date specified.'

"R.C. 5715.19(D) requires that the determination of a complaint filed for a particular year 'shall relate back to the date when the lien for taxes *** for the current year attached.' R.C. 323.11 provides that the lien date for real estate taxes is the first day of January. Likewise, R.C. 5715.01, which authorizes the Tax Commissioner to direct and supervise the assessment for taxation of all real property, provides that '[t]he commissioner shall neither adopt nor enforce any rule that requires true value for any tax year to be any value other than the true value in money on the tax lien date of such year ***.' Thus, the first day of January of the tax year in question is the crucial valuation date for tax assessment. Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision (1996), 75 Ohio St.3d 552 ***.⁵

"The essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time. Becker's approach was not based upon the facts as they existed as of January 1, 1994, the tax lien date. Becker's appraisals were based upon facts as they existed on December 31, 1991 and April 5, 1996, the dates of his appraisals. Evidence of the valuation as of these two dates is not evidence of the valuation as of January 1,

⁵In Olmsted Falls Village Assn., supra, the court specifically stated: "We emphasize that the BTA '*** may consider pre- and post-tax lien date factors that affect the true value of the taxpayer's property on the tax lien date.' *** However, the BTA must base its decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question." Id. at 555.

1994. The real estate market may rise, fall, or stay constant between any two dates, and the assumption that a change in valuation between two given dates is constant and uniform, without proof, may properly be rejected by the finder of fact. The BTA may accept all, part, or none of the testimony presented to it by an expert. Witt Co. v. Hamilton Cty. Bd. of Revision (1991), 61 Ohio St.3d 155 ***. In this case, the BTA chose not to accept Becker's valuation, and we agree." Id. at 29-30. (Parallel citations omitted.)

Accordingly, we cannot rely upon this appraisal in determining the subject's value as of tax lien date because to do so would render our determination "unlawful." Olmsted Falls Village Assn., supra, at 555.

Appellant also suggests that the subject property has been overvalued because it has been compared with property devoted to agricultural use rather than for forestry which, according to appellant, has a much higher per acre value in Ashtabula County than the latter. As reflected above, we have no evidence, other than the opinion expressed by appellant, upon which to determine the value of the subject property. Certainly appellant, by virtue of his relationship with the subject property, is competent to express his opinion of its worth. However, that opinion is not binding upon this Board. See, e.g., WJJK Investments, supra, at 32 ("While an owner may testify as to the value of his or her property, there is no requirement that the finder of fact accept that value as the true value of the property.") In this case, appellant based his opinion upon calculations derived from publications not included within the record or the opinions of

other individuals not testifying before this Board which we have found unpersuasive.

Pursuant to R.C. 5713.04, land is to be valued exclusive of the value of "crops, deciduous and evergreen trees, plants, and shrubs growing thereon[.]" Such is the case in the instant matter in which no separately stated value has been assigned to the trees growing upon the subject property. In fact, by virtue of an election made by the taxpayer, the subject property has received special treatment as "forest land" for purposes of ad valorem taxation which results in a reduction in tax liability. See R.C. 5713.22, et seq. Pursuant to these provisions, forest lands are taxed at fifty percent of the local tax rate. The subject property is presently being taxed in such a manner and, when an error was drawn to the attention of the BOR regarding the credit for such treatment, an adjustment was made. See S.T., Ex. E.

Finally, appellant asserts that the subject property is entitled to "current agricultural use valuation" (CAUV) status beginning in 1996 and that he should be granted a refund of taxes which have been paid since 1992 due to a miscalculation made by the Auditor. Each of these arguments present issues beyond the scope of this Board's jurisdiction in this appeal. Appellant's appeal does not arise from a determination of the BOR that the property is not entitled to CAUV status. In fact, the only suggestion that appellant has sought to have the property treated in such a manner is a copy of a document which he submitted after hearing, entitled "Initial Application for the Valuation of Land at its Current

Agricultural Use," which is dated January 31, 1998, well after the tax lien date.

Unfortunately, it appears that lack of adequate communication between the parties to this appeal may have unduly complicated these proceedings. Nevertheless, it is based upon the foregoing that we must conclude that appellant has failed to satisfy his burden of proof, with competent and probative evidence, that the value of the subject property was other than that determined by the BOR. Cf. Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision (1997), 78 Ohio St.3d 325. Accordingly, it is the decision of the Board of Tax Appeals that the subject property had the following true and taxable values as of January 1, 1996:

Parcel No. 27-003-00-013-00

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 77,300	Land	\$ 27,060
Building	<u>-0-</u>	Building	<u>-0-</u>
Total	\$ 77,300	Total	\$ 27,060

Parcel No. 27-003-00-013-01

	<u>TRUE VALUE</u>		<u>TAXABLE VALUE</u>
Land	\$ 21,600	Land	\$ 7,560
Building	<u>126,100</u>	Building	<u>44,140</u>
Total	\$147,700	Total	\$ 51,700

It is therefore the order of this Board that the Ashtabula County Auditor list and assess the subject property in accordance with our decision as announced herein.