

## OHIO BOARD OF TAX APPEALS

Cleveland Municipal School District	)	
Board of Education,	)	
	)	
Appellant,	)	CASE NOS. 99-P-1819,
	)	99-P-1820
vs.	)	
	)	(REAL PROPERTY TAX)
Cuyahoga County Board of Revision,	)	
the Cuyahoga County Auditor and	)	ORDER
FAI, Inc.,	)	
	)	(Denying Motion to Dismiss Appeal/
Appellees.	)	Motion for Leave to File Appeal)

### APPEARANCES:

For the Appellant School District	- Karrie M. Kalail David H. Seed Means, Bichimer, Burkholder & Baker Summit One, Suite 540 4700 Rockside Road Cleveland, OH 44131
For the County Appellees	- William D. Mason Cuyahoga County Prosecuting Attorney Courts Tower, Ninth Floor 1200 Ontario Street Cleveland, OH 44113
For the Appellee Property Owner	- Robert C. Wentz Cozza and Steuer 1420 Standard Building Cleveland, Ohio 44113

Entered: September 8, 2000

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

This matter is before us upon a motion to dismiss the school district's appeal filed by FAI, Inc. in accordance with the provisions of Ohio Adm. Code 5717-1-12. Alternatively, FAI seeks leave to file a notice of appeal outside the thirty-day period set forth in R.C. 5717.01. The school district filed its brief in opposition to the motion and FAI filed a reply. The parties waived our offer of an evidentiary hearing, electing instead to submit the matter upon a stipulation of facts. We now consider the motion upon the record before us which consists of the notice of appeal, the statutory transcript filed by the Cuyahoga County Auditor in accordance with the provisions of R.C. 5717.02, the stipulation of facts and the briefs submitted by the parties.

The property in question is located in the warehouse district of Cleveland, Ohio. It has been used as a surface parking lot for the past twenty years. FAI experienced a significant increase in the property's tax valuation when the Cuyahoga County Auditor completed his appraisal for the 1997 triennium. FAI filed an original complaint seeking to reduce that valuation. The school district responded with a counter complaint. The counter complaint sought to retain the auditor's valuation. Upon hearing the matter the Cuyahoga County Board of Revision made a determination to retain the value originally placed upon the subject property by the auditor. The school district then filed a notice of appeal with us seeking to increase the board of revision's valuation. Thereafter, FAI filed a notice of appeal with the Cuyahoga County Court of Common Pleas. FAI filed the instant motion fearing the scenario played out in *Trebmal Construction, Inc. v. Cuyahoga Cty. Bd. of Revision* (1994), 94 Ohio App.3d 246.

The motion has two branches. We consider first the motion to dismiss. FAI presents several arguments. Among them: (1) there is no justiciable controversy, (2) the school district failed to demonstrate it has been aggrieved, (3) the school district waived its right to request an increase and (4) no appealable issue is presented. FAI's stance vis-à-vis at least the first two arguments ignores the fact that the school district's notice of appeal seeks to increase the value determined by the Cuyahoga County Board of Revision. Nor are we offered direct authority for the proposition that an appellant is limited in the relief it may seek in an appeal before us to the value expressed in its original complaint before the board of revision. Each of these arguments is based on the belief that a counter complaint constitutes a pleading that limits the relief a party may seek. But in *Jones and Laughlin Steel Corp. v. Lucas Cty. Bd. of Revision* (1974), 40 Ohio St.2d 61, 63, 64, the Supreme Court appears to have concluded otherwise:

“However, the Court of Appeals held that any reduction in the assessed valuation by the Court of Common Pleas is limited to the valuation claimed in the taxpayer's initial complaint. We disagree. First, R.C. 5717.05 enjoins the Court of Common Pleas to determine the taxable value of the property. To arrive at taxable value, the court

determines a fair market value and then applies to that figure the appropriate taxation rate. The statutory mandate is simple. It places neither minimum nor maximum limitations on the court's determination of value, and there are none save the judicial requirement that the determination be supported by the evidence. Secondly, the Court of Appeals 'deemed' the taxpayer's complaint to the board a 'pleading in the case,' and stated further that 'any admission of fact against interest in a pleading is conclusive upon the pleader and he is bound by such admission, and the Court of Appeals is bound to accept as true such admissions in the pleadings.' Although we need not question the validity of this conclusion, we can not concur in the court's premise that the 'complaint' herein, filed with an administrative body prior to the institution of this judicial proceeding, is a pleading. See Civ. R. 7(A). Finally, even if the 'complaint' were a pleading, the averments contained therein would lack conclusive effect."<sup>1</sup>

The Supreme Court reiterated in *Cleveland Electric Illuminating Company v. Lake Cty. Bd. of Revision* (1997), 80 Ohio St.3d 591, 595:

"There is no requirement that the value of the property, as determined by the board of revision, must match the opinion of value set forth in the complaint. In *Jones and Laughlin Steel Corp. v. Lucas Cty. Bd. of Revision* (1974), 40 Ohio St.2d 61, 69 O.O.2d 353, 320 N.E.2d 658, this court considered whether in an appeal to a court of common pleas (in lieu of an appeal to the BTA) from a decision of the board of revision, the court could find a value which was lower than that claimed by the taxpayer in its complaint filed with the board of revision. The argument raised in *Jones and Laughlin* was that by setting a value in the

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<sup>1</sup> The Supreme Court held in *Raimonde v. Van Vlerah* (1975), 42 Ohio St.2d 21, 26, 27: "Under the Ohio Civil Rules, procedural matters are vastly changed from the days of code pleading. Cases are now 'tried on the proofs rather than the pleadings.' *De Loach v. Crowley's* (C.A.5, 1942), 128 F.2d 378. Under Civ. R. 54(C), the facts determine the relief to be granted in a particular case, except where a money judgment or default judgment is involved. The new rule makes it unnecessary to add the phrase, 'and such further relief as plaintiff may be entitled to in law and equity' to gain such additional relief. McCormac, Ohio Civil Rules Practice 99, Section 5:06. Rather, Civ. R. 15 allows amendments to pleadings when justice requires or when necessary to conform to the evidence. *Jones and Laughlin Steel v. Bd. of Revision* (1974), 40 Ohio St.2d 61, 320 N.E.2d 658. Experience under F.R.C.P. 54(c) has been similar. Wright, in his treatise, Law of Federal Courts (2 Ed.), 437 Section 98, states: ' \* \* \* (T)he judgment is not limited in kind or amount by the demand for relief, but may include whatever relief the successful party is entitled to, regardless of the demand. This is in accord with the general theory of Rule 15(b), that in a contested case the judgment is to be based on what has been proved rather than what has been pleaded. \* \* \* 'Thus the rule provides that the demand for judgment loses much of its restrictive force if the case is at issue. Particular legal theories of counsel then are subordinated to the court's right and duty to grant the relief to which the prevailing party is entitled whether demanded or not. The party may be awarded damages in excess of those he has demanded in his pleading, or may be awarded a different kind of relief than he requested.'"

complaint filed with the board of revision, the taxpayer made an admission that the real estate in question had the value stated in the complaint. This court rejected that argument and stated that in determining value the complaint ‘places neither minimum nor maximum limitations on the court’s determination of value, and there are none save the judicial requirement that the determination be supported by the evidence.’”

Proceedings to enforce the lien of real property taxes are *in rem* - - - not *in personam*. R.C. 5721.18, *Clark v. Lindsey* (1890), 47 Ohio St. 437, *Hunter v. Grier* (1962), 273 Ohio St. 158. Our constitutional and statutory mission is to determine the “true value” of real property - - - not personal liability. The auditor, the tax commissioner and the board of revision all share in this mission. Article XII, Section 2 of the Constitution of Ohio provides: “Land and improvements thereon shall be taxed by uniform rule **according to value**.” (Emphasis added.) R.C. 5713.03 provides: “The county auditor, from the best sources of information available, shall determine, as nearly as practicable, **the true value** of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon \* \* \* .” (Emphasis added.) R.C. 5715.01 provides that the tax commissioner shall: “adopt, prescribe, and promulgate rules **for the determination of true value** \* \* \* .” (Emphasis added.) R.C. 5715.11 provides that the county board of revision shall hear complaints relating **to the valuation of real property**. (Emphasis added.) And R.C. 5717.03 provides: “In the case of an appeal from a decision of a county board of revision, the board of tax appeals shall determine **the taxable value** of the property whose valuation or assessment by the county board of revision is complained of \* \* \* .” (Emphasis added.) This constitutional and statutory framework manifests an intention that real property valuation be effected in a uniform manner with “true value” serving as the equalizing basis of the system. Rules of pleading operate for the benefit (or detriment) of individual interests. Such rules constrain government agencies in their mission to determine true value in a uniform manner. A larger public interest is served by permitting those agencies charged with the uniform application of our tax laws a free hand to determine true value in a uniform

manner and not restricting their findings to the pleadings of individual parties. Rules of pleading are not part of the constitutional scheme. The General Assembly did not provide for such rules. Nor does judicial authority impose such rules. The notice of appeal filed by the school district in this matter was filed in accordance with the provisions of R.C. 5717.01. Jurisdiction vested in us upon the filing of the notice of appeal by the school district. FAI filed a subsequent notice of appeal with the court of common pleas. But R.C. 5717.05 provides: “ \* \* \* the forum in which the first notice of appeal is filed shall have exclusive jurisdiction over the appeal.” See also *Trebmal Construction, Inc., supra.*<sup>2</sup> Accordingly, the motion to dismiss is overruled.

We now consider the second branch of the motion. FAI requests leave to file a notice of appeal outside the thirty-day period set forth in R.C. 5717.01. R.C. 5717.01 provides: “An appeal from a decision of a county board of revision may be taken to the board of tax appeals within thirty days after the notice of decision of the county board of revision is mailed.” We would first observe that FAI is a party appellee to this appeal by virtue of the holding of the Supreme Court in *Columbus Apartments Associates v. Franklin County Bd. of Revision* (1981), 67 Ohio St.2d 85, and as such may participate and offer favorable evidence of value if this matter proceeds to a merit hearing. As for its desire to become a party appellant, we would observe that one has no inherent right to appellate review. The court of appeals for the sixth judicial district considered a similar thirty-day filing requirement in *Leiphart Lincoln-Mercury, Inc. v. Bowers* (1985), 107 Ohio App. 259, 264. The court observed:

“The courts of Ohio have fully recognized as fundamental and elementary that a litigant has no inherent right of appeal or review, that there is no common law right of appeal, which right is purely statutory, and that to have jurisdiction of an appeal provisions of law providing the method of appeal must be complied with.”

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<sup>2</sup> Questions raised concerning voluntary dismissal of the notice of appeal are premature.

“ \* \* \* Administrative officers and agencies have no common-law or inherent powers other than as have been granted to or conferred on them by law. As a creature of statute, it is without power to exercise any jurisdiction beyond that conferred by statute. The applicable sections of the Revised Code set out above are statutory, jurisdictional prerequisites as to the time for doing an act, and without compliance therewith the administrative agency is without power or authority. The jurisdiction of such officials and tribunals must be invoked in the manner prescribed by statute, and their proceedings must be in accordance with valid statutory requirements. They are authorized to act only in the mode prescribed by statute and cannot dispense with essential forms of procedure which condition their statutory powers, or have been prescribed for the purpose of investing them with power to act.”

The Supreme Court observed in *Zier v. Bureau of Unemployment Compensation* (1949), 151 Ohio St. 123:

“An appeal, the right to which is conferred by statute, can be perfected only in the mode prescribed by statute. The exercise of the right conferred is conditioned upon compliance with the accompanying mandatory requirements.”

And in *American Restaurant and Lunch Co. v. Glander* (1946), 147 Ohio St. 147, the Supreme Court held:

“These requirements are specific and in terms that are mandatory. The very statute which authorizes the appeal prescribes the conditions and procedure under and by which such appeal may be perfected. Where a statute confers the right of appeal, adherence to the conditions imposed is essential to the enjoyment of the right conferred. The party who seeks to exercise this right, must comply with whatever terms the statutes of the state impose upon him as conditions to its enjoyment.”

See also *Northlake Hills Cooperative Assn. v. Collins* (1976), 45 Ohio St.2d 13, *Clippard Instrument v. Lindley* (1977), 50 Ohio St.2d 121, *House of Shepherd v. Lindley* (1988), 37 Ohio St.3d 244.

We have no authority to grant the relief FAI requests.<sup>3</sup> We do not have power to grant leave to file a notice of appeal outside the thirty-day period established by the General Assembly in R.C. 5717.01. While we acknowledge the difficult and perhaps unfair circumstance in which FAI may find itself, its remedy does not lie with us.<sup>4</sup> Accordingly, the motion for leave to file a notice of appeal outside the thirty-day period set forth in R.C. 5717.01 is overruled. Nonetheless, we believe the circumstances of this case are appropriate for referral to mediation in accordance with the provisions of Ohio Adm. Code 5717-1-21. It is so ORDERED.

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<sup>3</sup> If FAI wanted appellate jurisdiction in the common pleas court it was incumbent upon FAI to file the first appeal. In the alternative FAI might have sought to independently verify with the board whether the school district had filed an appeal and then filed an appeal on its own behalf within the thirty day statutory period.

<sup>4</sup> The General Assembly could provide for a cross-appeal. See R.C. 5717.04 providing for appeals from adverse decisions of the Board of tax Appeals.