

ORIGINAL

IN THE SUPREME COURT OF OHIO

13-0574

DAVID R. JEZEK AND MARK JEZEK,

Appellants,

-vs-

CUYAHOGA COUNTY BOARD OF REVISION,  
THE CUYAHOGA COUNTY FISCAL  
OFFICER, AND THE ORANGE CITY SCHOOL  
DISTRICT BOARD OF EDUCATION,

Appellees.

CASE NO.

Appeal from the Ohio Board of Tax Appeals

Board of Tax Appeals Case No.  
2010-Y-3831

NOTICE OF APPEAL OF DAVID R. JEZEK AND MARY JEZEK

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SUPREME COURT OF OHIO

## NOTICE OF APPEAL OF APPELLANTS

Appellants David R. Jezek and Mary Jezek hereby give notice of their appeal as of right under R.C. § 5717.04 to the Supreme Court of Ohio from a Decision and Order of the Board of Tax Appeals, journalized in Case No. 2010-Y-3831 on March 11, 2013. A true copy of the Decision and Order of the Board being appealed is attached hereto as Exhibit A and incorporated herein by reference. Appellants hereby complain of the following errors in the Decision and Order of the Board of Tax Appeals:

1. The Board of Tax Appeals' decision limiting jurisdiction to tax years 2009 and 2010 is unreasonable and unlawful since it incorrectly applied the carryover provision set forth in R.C. 5715.19(D), which resulted in the value of the subject property to increase from the Board of Tax Appeals' decision of value of \$1,600,000 for tax years 2009 and 2010 back to the Auditor's 2009 value of \$2,660,500 for tax year 2011.
2. The Board of Tax Appeals' decision is unreasonable and unlawful since it incorrectly applied *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, which limited it's decision to tax years 2009 and 2010.
3. The Board of Tax Appeals' decision limiting jurisdiction to tax years 2009 and 2010 results in an unlawful taking of property under the Ohio and U.S. Constitution and, as a result, is unreasonable and unlawful.
4. The Board of Tax Appeals was unreasonable and unlawful since there was competent and credible evidence before the Board of Tax Appeals indicating the Cuyahoga County Fiscal Officer incorrectly valued the subject property as of January 1, 2011.
5. The Board of Tax Appeals' decision and order which limited jurisdiction to tax years 2009 and 2010 is not supported by the record and therefore is unreasonable and unlawful.
6. The decision of the Board of Tax Appeals limiting jurisdiction to tax years 2009 and 2010 is unreasonable and unlawful since the findings of fact and conclusions of law are against the manifest weight of the evidence since the Property Owners dismissed their 2011 complaint prior to any hearing.
7. The Board of Tax Appeals' decision limiting jurisdiction to tax years 2009 and 2010 violates the Property Owner's right to due process under the Ohio and U.S. Constitution and, as a result, is unreasonable and unlawful.
8. The Board of Tax Appeals' decision limiting jurisdiction to tax years 2009 and 2010 violates the Property Owner's right to equal protection under the law and, as a result, is unreasonable and unlawful.

Appellants request that the Court vacate the Board of Tax Appeals' decision which limited jurisdiction to the 2009 and 2010 tax years, and order the Board of Tax Appeals' to set a value for the subject property at a fair market value of \$1,600,000 for tax years 2009, 2010 and 2011.

Respectfully submitted,



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**Attorneys for Appellants**

**OHIO BOARD OF TAX APPEALS**

David R. Jezek and Mary Jezek, )  
 )  
 Appellants, ) (CASE NO. 2010-Y-3831  
 ) (REAL PROPERTY TAX)  
 vs. )  
 ) (DECISION AND ORDER  
 )  
 Cuyahoga County Board of Revision, the )  
 Cuyahoga County Fiscal Officer, and the )  
 Orange City School District Board of )  
 Education, )  
 )  
 Appellees. )

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Entered **MAR 11 2013**

Mr. Williamson and Mr. Johrendt concur.

This matter came to be considered by the Board of Tax Appeals upon a notice of appeal filed by the above-named appellants from a decision of the Cuyahoga County Board of Revision (“BOR”). In said decision, the board of revision determined the taxable value of the subject real property for tax year 2009. A

representative for the appellants appeared at a merit hearing convened before this board, along with Charles W. Flagg, a state certified appraiser, while the appellee Orange City School District Board of Education ("BOE") waived the opportunity to appear before this board, opting instead to submit a prehearing statement.<sup>1</sup> Although they were provided notice of the hearing before this board, the county appellees neither appeared nor waived their appearance. Therefore, this matter is considered upon the notice of appeal, the transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, the appellee BOE's prehearing statement, and the hearing record ("H.R.").

The subject property is a single-family home on approximately six acres of land in Hunting Valley, which is located in the Orange City School District. The subject is identified on the fiscal officer's records as parcel number 881-01-001, the auditor determined that the total true value of the subject property for tax year 2009 was \$2,660,500. The appellants filed an original decrease complaint with the BOR seeking a reduction in value for the subject property to \$1,600,000, based on: "Auditor's valuation exceeds true value of subject real property. Declining values. Other factors to be presented at BOR hearing." S.T., Exhibit ("Ex.") A. A countercomplaint was filed by the appellee BOE, asserting that the fiscal officer's values should be retained. S.T., Ex. B.

At the BOR hearing, the appellants relied on the testimony of appellant David R. Jezek, a compilation of sales of properties that they asserted were comparable to the subject, and a compilation of newspaper articles to show the condition of the

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<sup>1</sup> The appellants filed a motion to strike the BOE's statement. We deny the appellants' motion, and give the statement appropriate weight.

local and national real property markets. S.T., Exs. C and H. The BOE also appeared and presented a list of sales of properties that it asserted were comparable to the subject property, but offered no testimony. *Id.* Based on the “comp sales” presented, the BOR reduced the true value of the subject property to \$2,500,000. S.T. at Ex. E. From the BOR’s decision, the property owners filed the present appeal, seeking a reduction to a true value of \$1,600,000.

We begin our review of this matter by noting that a party who asserts a right to an increase or decrease in the value of real property has the burden to prove the right to the value asserted. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336; *Crow v. Cuyahoga Cty. Bd. of Revision* (1990), 50 Ohio St.3d 55; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318. Consequently, it is incumbent upon an appellant challenging the decision of a board of revision to come forward and offer evidence that demonstrates its right to the value sought. *Cleveland Bd. of Edn.*, *supra*; *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493. Once an appellant has presented competent and probative evidence of true value, other parties asserting a different value then have a corresponding burden of providing sufficient evidence to rebut the appellant’s evidence. *Springfield Local Bd. of Edn.*, *supra*. Accordingly, this board must proceed to examine the available record and to determine value based on the evidence before it. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In doing so, we determine the weight

and credibility to be accorded to the evidence presented. *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision* (1975), 44 Ohio St.2d 13.

When determining value, it has long been held by the Supreme Court that “the best evidence of ‘true value in money’ of real property is an actual, recent sale of the property in an arm’s-length transaction.” *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129. See, also, *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979. Absent a recent arm’s-length sale, as in the instant case, true value in money can be calculated by applying any of the three alternative methods provided for in Ohio Adm. Code 5703-25-07: 1) the market data approach, which compares recent sales of comparable properties, 2) the income approach, which capitalizes the net income attributable to the property, and 3) the cost approach, which depreciates the improvements to the land and then adds them to the land value.

In support of their opinion of value at the hearing before this board, the appellants relied the testimony and written report of Mr. Flagg, who opined that the true value of the subject was \$1,600,000 as of January 1, 2009. Mr. Flagg employed the sales comparison approach to valuation, asserting that the cost and income approaches were inappropriate due to the age and use of the property. H.R. at 25-26. Mr. Flagg considered nine sales, which occurred at varying times, as early as August 2002 and as late as August 2012, and at prices ranging from \$1,207,000 to \$2,200,000. H.R., Ex. A. In his report, Mr. Flagg explained that to develop his opinion of the true value of the subject, he surveyed the local housing market, which he defined within a

five-mile radius of the subject property. *Id.* at 8. Mr. Flagg explained that he utilized sales of properties in Hunting Valley, the village in which the property is located, along with other villages located in the same school district because the areas are often considered synonymous. *H.R.* at 14.

Mr. Flagg further explained that he reviewed sales over a span of years beginning January 1, 2007 through date of value, though he “uncovered” prior sales of certain properties to discover any market trends or a market change over time. *H.R.*, *Ex. A* at 8. Thus, the nine sales involved only five distinct properties for the purpose of determining the property adjustment necessary to account for changes in the market after September 2008. *Id.*; *H.R.* at 24-25. Though he considered other factors, Mr. Flagg primarily adjusted the sales based on the size of the lot, the number of rooms, the gross living area of the home, garage, and changes in market condition from the time of the sale. Mr. Flagg explained that the adjustment for market conditions were only made to those sales that occurred before September 2008 because it was such an immediate and drastic change, and that since that time, market values have remained relatively constant. *H.R.* at 47. After these adjustments, Mr. Flagg arrived at a range of values from \$1,277,000 to \$1,832,000, making the final determination that the property’s true value was \$1,600,000 as of January 1, 2009.

When parties rely on appraisers’ opinions of value, this board may accept all, part, or none of those appraisers’ opinions. *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 609. Further, we have often acknowledged that the appraisal of real property is not an exact science, but is instead an opinion, the

reliability of which depends upon the basic competence, skill and ability demonstrated by the appraiser. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported. Finally, in determining value herein, we must look to all aspects of the record before us in our independent review of the subject property. *Colonial Village, supra*.

Upon review of Mr. Flagg's report, we find the conclusions he reached to be sufficiently supported. Accordingly, based upon the evidence currently before this board, we find that the values of the subject property as of January 1, 2009,<sup>2</sup> were as follows:<sup>3</sup>

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
LAND	\$307,610	\$107,660
BUILDING	\$1,292,390	\$452,340
TOTAL	\$1,600,000	\$560,000

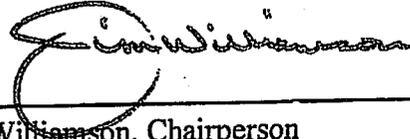
The Fiscal Officer of Cuyahoga County is hereby ordered to list and assess the subject properties in conformity with this decision and order and to carry forward the determined values in accordance with law.

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<sup>2</sup> The carryover provision, which is set forth in R.C. 5715.19(D), is cut off by either the filing of a new complaint or the statutorily required reappraisal to be performed by the county auditor. See *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468. We note that the appellants do not dispute that they filed a complaint for tax year 2011, but rather argue that this complaint should not divest this board of its jurisdiction. Thus, the value determined herein applies only to tax years 2009 and 2010. See, generally, R.C. 5713.01(B), 5715.33, 5715.34.

<sup>3</sup> The beginning point of the board's value findings is the fiscal officer's original assessments for tax year 2009. We have utilized the percentages reflected therein to allocate value between land and building. See *FirstCal Industrial 2 Acquisition LLC v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.

A handwritten signature in cursive script, appearing to read "Jim Williamson", written over a horizontal line.

Jim Williamson, Chairperson

## PROOF OF SERVICE

I hereby certify that a copy of this Notice of Appeal was sent this 8<sup>th</sup> day of April, 2013 by certified mail, return receipt requested to:

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