

OHIO BOARD OF TAX APPEALS

Aina L. Schuster and)
The Schuster Limited Partnership,)
)
Appellants/Appellees,)
and)
)
Olmsted Falls Board of Education,)
)
Appellee/Appellant,)
)
vs.)
)
Cuyahoga County Board of Revision and)
the Cuyahoga County Auditor,)
)
Appellees.)

CASE NOS. 2003-V-525
2003-V-526
2003-V-528
2003-V-529
2003-V-530
2003-V-531

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Property Owners - Walter & Haverfield LLP
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Entered May 20, 2005

Ms. Margulies, Mr. Eberhart, and Mr. Dunlap concur.

This cause and matter came on to be considered by the Board of Tax Appeals upon notices of appeal filed herein by property owners Aina Schuster, Trustee and The Schuster Limited Partnership (collectively “Schuster”) and notices of appeal filed on behalf of the Olmsted Falls Board of Education (“BOE”) from decisions of the Cuyahoga County Board of Revision (“BOR”).

We now consider this matter upon the notices of appeal, the statutory transcripts (“S.T.”) certified by the auditor, the evidence presented at this board’s evidentiary hearing (“H.R”), and the briefs filed by counsel for Schuster and the BOE.

The subject property is located in Cuyahoga County, Ohio and is identified on the auditor’s records as parcel numbers 291-18-001 and 291-20-006. The subject parcels¹ are adjacent to each other, combine for a total of 28.74 acres, and are improved with roughly 457,312 square feet of greenhouses. The parcels are further improved with two single-family residences. H.R. at 10, Ex. A at 29.

For tax year 2000, the auditor valued the parcels as follows:

	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Parcel 291-18-001		
Land	\$ 7,000	\$ 2,450
Bldg	<u>\$1,599,910</u>	<u>\$559,690</u>
Total	\$1,606,910	\$562,140
Parcel 291-20-006		
Land	\$ 49,900	\$ 17,470
Bldg	<u>\$ 891,000</u>	<u>\$192,540</u>
Total	\$ 940,900	\$210,010
Grand Totals	\$2,547,810	\$772,150

¹ Parcel 291-18-001 contains 15.520 acres, is improved with 292,445 square feet of greenhouse and production facilities , and is owned by The Schuster Limited Partnership. Parcel 291-20-006 contains 13.21 acres, is improved with 164,867 square feet of greenhouse and production facilities, and two residential structures, and is owned by Aina L. Schuster, Trustee. S.T., Ex. D. By order dated July 25, 2003, this board consolidated the appeals and cross-appeals filed on behalf of Schuster and the BOE.

After conducting a hearing, the BOR determined the true and taxable values of the subject parcels for tax year 2000 should be reduced as follows:

Parcel 291-18-001	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 7,000	\$ 2,450
Bldg	<u>\$1,093,000</u>	<u>\$382,550</u>
Total	\$1,100,000	\$385,000
Parcel 291-20-006	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$ 49,900	\$ 17,470
Bldg	<u>\$ 550,100</u>	<u>\$192,540</u>
Total	\$ 600,000	\$210,010
Grand Totals	\$1,700,000	\$595,010

Schuster requests that the subject property's total true valuation be reduced to \$1,100,000. The BOE seeks to have this board affirm the determination of the BOR.²

We begin our review of the evidence 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 its 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 the 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.

² In its notices of appeal, the BOE initially sought to have the auditor's original valuations reinstated. At hearing before this board, counsel for the BOE indicated that his client only seeks to prevent any further reduction from the value established by the BOR. H.R. at 9.

It is not enough, however, to simply come forward with some evidence of value. Neither is it sufficient to grant the requested increase or decrease merely because no evidence is adduced in contradiction to the claim. *Western Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340. In short, there is a burden of persuasion that rests with the appellant to convince this board that the appellant is entitled to the value which it seeks. *Cincinnati School Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325. Once the appellant presents competent and probative evidence of value, other parties asserting a different value then have the corresponding burden of providing evidence that rebuts appellant's evidence of value. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493. Accordingly, this board must proceed to examine the available record and to determine value based upon the evidence before it. *Coventry Towers, Inc. v. Strongsville* (1985), 18 Ohio St.3d 120; *Clark v. Glander* (1949), 151 Ohio St. 229. In so doing, we will 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. We proceed by examining the evidence of the subject's true value as presented by the parties.

When determining value, the Ohio Supreme Court has long held 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; *State ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410. Absent a recent sale, as in the instant matter, true value in money can be calculated

by applying any of three alternative methods provided: 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.

As was the case before the BOR, Schuster offered at this board's evidentiary hearing the testimony and written appraisal report of Mr. Charles R. Ritley. Mr. Ritley is a licensed real estate appraiser who holds an SRA designation from the Appraisal Institute. Mr. Ritley developed two approaches to value, the cost and sales comparison approaches, to arrive at an opinion of value for the subject property. Additionally, Schuster presented the testimony of David Schuster, general manager of the Schuster's Greenhouse, located on the subject property. The BOE and county appellees rested upon the record below and their cross-examination of the witnesses offered by Schuster.

Mr. Schuster chronicled the subject's history, which began with his grandfather starting the greenhouse business in 1924. Mr. Schuster testified that the original greenhouses were constructed between the 1920s through the 1960s. In the late 1970s, the family purchased parcel 291-18-001, which was previously improved with greenhouses built in the 1930s and 1940s. H.R. at 74-75.

Mr. Schuster testified to the inadequacies and obsolescence associated with the vintage greenhouses on the subject as compared with modern greenhouse facilities. Mr. Schuster explained that modern facilities are much taller, in order to house automated irrigation systems and retractable shade coverings. Additionally, the taller

modern structures provide for better environmental control, more consistent air temperatures, additional room for artificial lighting, and are improved with radiant floor heating systems that provide superior heating. H.R. at 77, 83. Mr. Schuster also testified that modern buildings are not encumbered by a multitude of support posts and beams, allowing for machinery to be utilized to move product in and out of the facility, with minimal labor. Id.

Mr. Schuster testified that the subject's greenhouses have low rooflines and numerous support posts. The effect of said vintage greenhouses is such that he is unable to utilize automated irrigation systems, requiring the use of several employees to continuously water product by hand, and he is unable to use equipment to move product from place to place, requiring the use of several employees to manually move product.³

Turning to the expert testimony provided to this board, Mr. Ritley's appraisal report was prepared with an "as of" date of January 1, 2000. S.T., Ex. D. Mr. Ritley ultimately arrived at an opinion of value of \$1,100,000 for the subject parcels. H.R. at 30, S.T., Ex. D at 55, Ex. A at 55.⁴

At the outset, Mr. Ritley reasoned that the income approach to value would not be applicable because the vast majority of green houses are owner operated, as is the

³ Mr. Schuster estimated that two-thirds of his labor expense is used in watering plants and moving material. H.R. at 77. Further, Mr. Ritley's investigation concerning modern greenhouse production practices similarly reveals that the subject property uses ten laborers per acre, whereas more modern facilities utilizing modern equipment average three laborers per acre. H.R. at 22.

⁴ At hearing before this board, Mr. Ritley identified Ex. A, consisting of selected corrected pages that correspond to his complete appraisal report previously submitted to the BOR. Without specifically referencing said corrected pages, all future references to said appraisal report (S.T., Ex. D) necessarily include the corrected pages. Furthermore, included in the statutory transcript Ex. D is a copy of a letter from another law firm, apparently unrelated to the subject property today.

subject, and that there was insufficient income data due to the specialized use of the subject property. H.R. at 17, S.T., Ex. D at 45, 55.

In his sales comparison approach, Mr. Ritley identified five sales of comparable family-owned greenhouse facilities that sold between 1993 and 1997. After adjustments, said comparable sales provided a range between \$1.35 to \$2.82 per square foot of greenhouse.⁵ Mr. Ritley arrived at value of \$1.85 per square foot of greenhouse to be applied to the subject's facilities. Mr. Ritley separately assigned values to the two residential structures, \$110,000 and \$35,000, based upon comparables sales of residences in the subject's immediate area,⁶ to arrive at a total valuation of \$1,000,000. S.T., Ex. D at 54.

Counsel for the BOE is critical of Mr. Ritley's use of and adjustments made to the four comparable sales relied upon. Specifically, counsel argues that some of the comparable sales included residential structures, some were sold via land contracts, and two of the comparable sales included personal property. The BOE is critical of the manner in which Mr. Ritley made or failed to make adjustments for the above-mentioned circumstances related to the comparable sales.

This board has previously held that a sale made under a land-installment contract *may* constitute a valid, arm's-length transfer. *Starzyk v. Athens Cty. Bd. of*

⁵ Similar to the subject property, sales comparable four includes a residential structure. Mr. Ritley removed the value of said residential structure before arriving at an adjusted price per square foot of greenhouse.

⁶ Mr. Ritley concedes that the summary appraisal does not contain data used to arrive at the values per square foot (\$55 for the residence and "a little over \$30" for the cottage). Mr. Ritley testified that he looked at comparable sales of residences in the subject's immediate area and extracted the appropriate land values from the comparables to arrive at values for the residential structures alone. H.R. at 29, 53-54.

Revision (Feb. 4, 1994), BTA No. 1992-M-635, unreported. While such sales can become a questionable basis for valuation (e.g., abnormal financing or the length of the contract renders the sale “not recent”), the burden rests with the party attempting to refute such sales to prove such claims. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Mar. 21, 1997), BTA No. 1996-T-209, unreported; *Bd. of Edn. for the Berea City School Dist. v. Cuyahoga Cty. Bd. of Revision* (Apr. 7, 2000), BTA No. 1997-T-1344, unreported.

Given the unique nature of the improvements upon the subject property, we are not persuaded by the BOE’s critique. At hearing before this board, Mr. Ritley testified:

“The problem arises with comparable sales for greenhouses, again, because these are single-purpose properties and they do not turn over frequently. They’re held for long periods of time by the same owners, and there is very little market activity in these facilities.” H.R. at 27.

The record before us demonstrates that sales of comparable small-scale owner-operated greenhouses are limited. Nevertheless, Mr. Ritley has been able to identify and make necessary adjustments to the sales prices of four comparables, which provide competent and probative evidence to support what the subject property would sell for on the open market. Although differences do exist between the subject and the comparables, the comparables offer credible support for Mr. Ritley’s utilization of a value of \$1.85 per square foot of the greenhouse facilities.⁷

⁷ Arguably, Mr. Ritley’s inability to deduct a value of personal property associated with the sale prices of comparables two and three only serves to provide a *higher* dollar amount per square foot for those particular

In his cost approach, Mr. Ritley began by creating a value for the unimproved land utilizing six comparable sales of property. S.T., Ex. D at 47-48. All but one comparable did contain improvements such as residential homes. Specifically, comparable one contains less than nine acres and was improved with greenhouses that were ultimately razed; comparable two contains more than 16 acres and had a home that was razed by the buyer; comparable three contains over six acres, a home, and formerly had greenhouses that have since been razed; comparable four contains five acres and is improved with a residential structure that is to be moved or razed; and comparable six contains over 32 acres and a single family home. Id. The six comparables provided an unadjusted range between \$6,659 to \$20,941 per acre. After adjustments, Mr. Ritley arrived at a land value of \$17,000 per acre, or \$490,000 for the subject parcels.⁸

Utilizing the February 2001 cost estimates from the Marshall Valuation Service, Mr. Ritley assigned cost values for the subject's greenhouses, ancillary buildings, office space, concrete paving, and storage buildings, arriving at a cost value of \$3,021,230. Mr. Ritley reasoned that given the age of much of the greenhouse facilities and their functional obsolescence, an eighty-percent (80%) depreciation rate, utilizing the age/life method, should be applied to the improvements' cost. From this point, Mr.

(footnote continued) comparables. Mr. Ritley has taken a reasonable approach to view said comparable sales based upon price per square foot of greenhouse facility to account for differences in size. Furthermore, the existence of the two residential structures on the subject property appears to be ancillary to the highest and best use of the property as a greenhouse facility. No evidence provided by the appellees suggests that the values of the subject's two residential structures should be anything more than the values assigned by Mr. Ritley.

⁸ Although the subject was enrolled in the Current Agricultural Use Valuation ("CAUV") program on tax lien date, the values complained of today, as well as the value determinations made by Mr. Ritley, are based on market value, before any reduction is made pursuant to the CAUV program. H.R. at 30.

Ritley added the land value and the values of the two residential structures to arrive at a total value of \$1,200,000 via the cost approach.

Through the unrebutted testimony of Mr. Schuster, as well as the testimony from Mr. Ritley concerning his investigation of modern greenhouse practices, the record supports the conclusion that the subject's vintage greenhouse structures suffer from significant obsolescence.

In his final analysis, Mr. Ritley offers a fair assessment of both his cost and sales comparison approaches, indicating that the sales comparison approach offers support to the value in the cost approach. S.T., Ex. D at 55.

We are persuaded by Mr. Ritley's analysis. The subject property is a special use property to which few comparables exist. We find Mr. Ritley's identification of comparable greenhouse facility sales, comparable land sales of former greenhouse facilities, and the evidence to support the significant obsolescence to be competent probative evidence of value.

The Board of Tax Appeals is given great discretion in what weight to give the evidence presented before it. *Cardinal Fed. S. & L. Assn.*, supra. The board may accept or reject any and all evidence presented. Therefore, for the above-mentioned reasons, this board finds that the opinion of Mr. Ritley constitutes substantive and probative evidence of value.

Therefore, we hold that Schuster has met its burden of demonstrating the subject property's fair market value as of tax lien date. We further find that neither the

BOE nor the county appellees have responded with any evidence of value. Therefore, we find the value⁹ of the subject as of January 1, 2000 to be:

Parcel 291-18-001	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$263,840	\$92,350
Bldg	<u>\$381,720</u>	<u>\$133,600</u>
Total	\$645,560	\$225,950
Parcel 291-20-006	<u>TRUE VALUE</u>	<u>TAXABLE VALUE</u>
Land	\$229,870	\$80,450
Bldg	<u>\$224,570</u>	<u>\$78,600</u>
Total	\$454,440	\$159,050
Grand Totals	\$1,100,000	\$385,000

It is the decision and order of the Board of Tax Appeals that the Cuyahoga County Auditor shall list and assess the subject property in conformity with this decision.

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⁹ Rounded from Mr. Ritley's report.