# THE COMMONWEALTH COURT OF PENNSYLVANIA

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| Rea Jones and Janice Jones, Appellants | : | |
| v. | : | No. 336 C.D. 2008 |
| | : | Argued: October 14, 2008 |
| Washington County Board of Assessment Appeals | : | |

**BEFORE:** **HONORABLE BONNIE BRIGANCE LEADBETTER,** President Judge
**HONORABLE MARY HANNAH LEAVITT,** Judge
**HONORABLE JOHNNY J. BUTLER,** Judge

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY**
**PRESIDENT JUDGE LEADBETTER** **FILED:** December 19, 2008

Property owners Rea and Janice Jones (Taxpayers) appeal from the order of the Court of Common Pleas of Washington County, which denied their property tax assessment appeal and affirmed the Washington County Board of Assessment Appeals' assessment of two of their properties for the 2006 tax year.[1] While this matter involves an increase in property assessment pursuant to the 2004 amendment to the Pennsylvania Farmland and Forest Land Assessment Act of

[1] Washington County is a fourth class county and, therefore, its assessments are governed by both the General County Assessment Law, Act of May 22, 1933, P.L. 853, *as amended*, 72 P.S. §§ 5020-1 – 5020-602, and the Fourth to Eighth Class County Assessment Law, Act of May 21, 1943, P.L. 571, *as amended*, 72 P.S. §§ 5453.101 – 5453.706.

1974 (Act),[2] the issue before the court is simply whether common pleas erred in concluding that Taxpayers failed to overcome the *prima facie* validity of the County's assessment records. We conclude that common pleas did not so err and affirm.

Taxpayers own two parcels of real estate in Chartiers Township, Washington County; one parcel is 29 acres and the other is 10 acres. Each parcel contains a one-acre home site, also referred to as the "farmstead"[3] or "base acre," with a home or building situate thereon. The County's increased assessment of the farmsteads is at the heart of the instant appeal. In order to understand the statutory framework leading to the increased assessments, we note generally that, prior to the amendment of the Act in 2004, the farmstead or base acre was preferentially assessed under the Act along with any surrounding acreage that was devoted to agricultural use, agricultural reserve or forest reserve.[4] Following the amendment,

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[2] Act of December 19, 1974, P.L. 973, *as amended*, 72 P.S. §§ 5490.1-5490.13. This Act is generally referred to as the Clean and Green Act. Specifically, the amendments effectuated by the Act of December 8, 2004, P.L. 1785 (commonly referred to as Act 235), triggered the underlying reassessments.

[3] "Farmstead land" is defined as: "Any curtilage and land situated under a residence, farm building or other building which supports a residence, including a residential garage or workshop." Section 2 of the Act, 72 P.S. § 5490.2.

[4] As we noted in *Sher v. Berks County Board of Assessment Appeals*, 940 A.2d 629 (Pa. Cmwlth. 2008):

> The purpose of the Clean and Green Act is "to protect a landowner from being forced to cease agricultural development or sell a portion of . . . land in order to pay unusually high taxes" and "to assure landowners that their land would not be assessed at the same rate as adjacent property under pressure to be developed and not enrolled in the program by ignoring the development value of land for tax purposes and encouraging landowners to preserve the land in its current state." *Saenger v. Berks County [Bd.] of Assessment Appeals*, 732 A.2d 681, 682 n.1 (Pa. Cmwlth. 1991). *See also* 7 Pa. Code § 137b.1. Section 3(a) of the Clean and Green

**(Footnote continued on next page…)**

however, farmstead land located in an area classified under the Act as either agricultural reserve or forest reserve was no longer eligible for preferential assessment unless a majority of the land was in agricultural use.[5] *See* Section 4.2 of the Act, 72 P.S. § 5490.4b. *See also Sher v. Berks County Bd. of Assessment Appeals*, 940 A.2d 629, 634 (Pa. Cmwlth. 2008).

While there is a dearth of facts regarding the assessment history of the two properties in question, apparently both properties are preferentially assessed under the Act based upon classification as "agricultural reserve."[6] Following amendment of the Act in 2004, the County issued change of assessment notices, increasing the market and assessed values of the farmstead or base acre on each of Taxpayers' parcels. Specifically, the market value of the base acre on the 29-acre

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**(continued…)**

> Act, 72 P.S. § 5490.3(a), provides that "for general property tax purposes, the value of land which is presently devoted to agricultural use, agricultural reserve, and/or forest reserve shall, on application of the owner and approval thereof . . . be that value which such land has for its particular land use category . . . ."

*Id.* at 631 n.1.

[5] Section 4.2 was added by Section 4 of the Act of December 21, 1998 (Act 156), and later amended by Section 3 of Act 235, which amended subsections (a) and (b) and added subsection (d), effective February 7, 2005. In *Sher*, this court observed that:

> The legislative history of Act 235 establishes that it was enacted to promote the legitimate legislative purpose of closing the loophole of Act 156 [which amended the Act to allow preferential assessment of the base acre], advancing the equality of the tax burden and recouping the tax revenue loss that resulted from the preferential treatment conferred by Act 156.

940 A.2d at 636 (footnote omitted).

[6] We presume, based upon the loss of preferential tax treatment for the base acre, that the Taxpayers' properties are classified as agricultural reserve. The Act defines "agricultural reserve" as "[n]oncommercial open space lands used for outdoor recreation or the enjoyment of scenic or natural beauty and open to the public for such use, without charge or fee, on a nondisciplinary basis." Section 2 of the Act, 72 P.S. § 5490.2.

parcel was increased from $2,360 in 2005 to $12,456 in 2006.[7] With respect to the 10-acre parcel, the market value of the base acre was increased from $912 in 2005 to $12,336 in 2006.[8]

Taxpayers appealed their assessments and the Washington County Board of Assessment Appeals issued "no change" decisions, thereby denying the appeals. The appeals were consolidated for a de novo hearing before common pleas, during which the County introduced the property record cards for the two properties and adduced the testimony of its Chief Assessor, Robert Neil. Neil testified that the base acres were valued for the 2006 tax year at 18% of the market value of the home.[9] According to Neil, this method was used by the contractor involved in valuing agricultural properties for purposes of the most recent county-wide reassessment, and the County has continued to follow this method of valuing an agricultural farmstead or base acre. Specifically, Neil testified on direct examination as follows:

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[7] These are "base year" values. The corresponding assessments, based upon an established predetermined ratio of 25%, are $590 and $3,144.

[8] The corresponding assessments are $228 in 2005 and $3,084 in 2006. We note that these figures are derived from Taxpayers' notices of appeal, filed with common pleas. For the 10-acre parcel, common pleas recites a 2006 assessed value of $3,144 and a corresponding market value of $23,456. We cannot discern the source of these figures, but the parties do not take issue with them and they are not germane to the resolution of the instant appeal.

[9] The County notes in its appellate brief that, prior to the Act of December 21, 1998, P.L. 1225 (referred to as Act 156), which permitted the farmstead or base acre of land in agricultural use, agricultural reserve or forest reserve to receive preferential assessment, the County valued the farmstead portion of land that was enrolled in a preferential assessment program under the Act at 18 percent of the market value of the home or building situate thereon. According to the County, now that the farmstead is not entitled to preferential assessment, it has merely reverted back to its pre-Act 156 method of valuing farmsteads, which, as the Chief Assessor noted, was developed in connection with the county-wide reassessment that occurred in the early 1980s.

> Q. Now, are you aware of how that figure [18% of the value of the home] came about?
> A. As far as I can remember it was the sales analysis that was used and the contractor felt that [18%] would be broad scope as far as covering all the districts and it would fluctuate based on the value of the home.
> Q. Was it determined between your office and the contractor who did the statistical information for the County for the last county-wide reassessment, that the [18%] was a just and appropriate figure?
> A. Yes.
> Q. That was based on statistical information that those individuals had at that time?
> A. That's correct.
> Q. Has that figure been used ever since?
> A. Yes.

Hearing of November 13, 2007, Notes of Testimony (N.T.) at 9, Reproduced Record (R.R.) at 41a. Neil agreed on cross-examination that if the properties were valued as residential lots, rather than farmsteads or base acres, they would have a base-year market value of 16 cents per square foot.[10]

Other than cross-examining the Chief Assessor regarding the County's method of valuing residential lots and farmsteads during the county-wide reassessment and following the 2004 amendment to the Act, Taxpayers did not present any expert testimony to controvert either the assessment records for the properties in question or the Assessor's opinion, nor to demonstrate that valuing the base acre at 18 percent of the market value of the home lacked any correlation to the actual value during the base-year.

[10] In pursuing cross-examination, Taxpayers' counsel made repeated references to the "Geographic Profile," which Neil described as a guideline, developed and used by the contractor involved in the county-wide reassessment, to value residential lots less than 10 acres in size. N.T. at 14, R.R. at 46a. According to the Chief Assessor, the geographic profile does not apply to either agricultural land or farmsteads valued under the Act.

Based upon the record, common pleas concluded that the County's method of valuing the base acre was reasonable and uniform and that Taxpayers failed to overcome the *prima facie* validity of the assessment records. Therefore, common pleas affirmed the assessment reflected in the property record cards. The present appeal followed.

On appeal, Taxpayers contend that the County's method of valuing the base acre does not reflect fair market value as required by Section 137b.27 of the regulations promulgated under the Act, 7 Pa. Code § 137b.27.[11] Specifically, Taxpayers contend that:

> [T]he only logical, reasonable and uniform way to value the one acre home sites is to value them the same as comparable land that was never afforded preferential assessment under the Clean and Green Act. Robert Neil, the chief county assessor, testified that residential lots in taxpayers' geographic area containing approximately 37,162 square feet would be assessed pursuant to the rate set forth in the Geographic Profile at 16 cents per square foot. (R57a, 58a, 69a)

Taxpayers' appellate brief at 9. Clearly, Taxpayers desire their lots to be valued as residential lots rather than as property in an agricultural area. In addition, Taxpayers contend that the assessments lack uniformity because the market value of one home site is greater than the other.[12] These contentions lack merit.

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[11] That subsection provides: "Land that is included in an application for preferential assessment under the act but is ineligible for preferential assessment shall be appraised at fair market value and shall be assessed accordingly. . . ." The parties dispute whether this provision applies. Based upon the evidence of record, we need not resolve this issue.

[12] Specifically, $10,243 versus $11,424. These figures are also reflected on the property record card and were testified to by the assessor. While it is unclear which figures reflect the County's actual assessment, we not need pin down those values because Taxpayers not only failed to overcome the *prima facie* validity of the assessment records, but they also really take issue only with the methodology used to value the base acres.

The procedure and burdens in a tax assessment appeal are well-settled. As our Supreme Court noted in *Green v. Schuylkill County Board of Assessment Appeals*, 565 Pa. 185, 772 A.2d 419 (2001):

> The procedure requires that the taxing authority first present its assessment record into evidence. Such presentation makes out a *prima facie* case for the validity of the assessment in the sense that it fixes the time when the burden of coming forward with evidence shifts to the taxpayer. If the taxpayer fails to respond with credible, relevant evidence, then the taxing body prevails. But once the taxpayer produces sufficient proof to overcome its initially allotted status, the *prima facie* significance of the Board's assessment figure has served its procedural purpose, and its value as an evidentiary devise is ended. Thereafter, such record, of itself, loses the weight previously accorded to it and may not then influence the court's determination of the assessment's correctness.
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> The taxpayer still carries the burden of persuading the court of the merits of his appeal, but that burden is not increased by the presence of the assessment record in evidence.
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> Of course, the taxing authority always has the right to rebut the owner's evidence and in such a case the weight to be given to all the evidence is always for the court to determine. The taxing authority cannot, however, rely solely on its assessment record in the face of countervailing evidence unless it is willing to run the risk of having the owner's proof believed by the court.

*Id.* at 195, 772 A.2d at 426 [quoting *Dietch Co. v. Bd. of Property Assessment*, 417 Pa. 213, 221-22, 209 A.2d 397, 402 (1965)].

It is beyond peradventure that common pleas is not an assessor, nor an appraiser. *Id.* at 196, 772 A.2d at 426. Rather, common pleas must make a finding of actual value based on the evidence before it. *Id.* Here, Taxpayers failed to adduce any evidence, expert or otherwise, to establish the actual, base-year value

of the farmsteads. While Taxpayers tried to demonstrate, albeit unsuccessfully through cross-examination, that the County's method of valuation was illogical, they failed to come forward with competent, credible evidence to support a different valuation. Moreover, the record, as developed, lacked sufficient evidence to support a conclusion that the properties could properly be valued as residential lots, let alone that principles of uniformity require that residential land and farmstead land within agricultural or forest reserve land must be valued the same. Finally, Taxpayers failed to offer any evidence to demonstrate that the actual value of all farmsteads should be the same. Therefore, Taxpayers simply failed to overcome the *prima facie* validity of the assessment record. Consequently, common pleas did not err in affirming the assessments set by the County.

Accordingly, the order of common pleas is affirmed.

**BONNIE BRIGANCE LEADBETTER,**
President Judge

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**O R D E R**

AND NOW, this 19th day of December, 2008, the order of the Court of Common Pleas of Washington County in the above-captioned matter is hereby AFFIRMED.

**BONNIE BRIGANCE LEADBETTER,**
President Judge