

OHIO BOARD OF TAX APPEALS

Board of Education of the)	CASE NO. 2007-T-616
Columbus City Schools,)	
)	(REAL PROPERTY TAX)
Appellant,)	
)	DECISION AND ORDER
vs.)	
)	Reversed/Remanded on Appeal Feb. 26, 2009
Franklin County Board of Revision,)	Ohio Supreme Court No. 2008-0717
Franklin County Auditor, and Leonard L.)	
Green Brice Road, LLC,)	
)	2009-Ohio-760
)	
Appellees.)	

APPEARANCES:

For the Appellant -	Rich, Crites & Dittmer, L.L.C. Mark H. Gillis 300 East Broad Street, Suite 300 Columbus, Ohio 43215-3704
For the County Appellees -	Ron O'Brien Franklin County Prosecuting Attorney Paul M. Stickel Assistant Prosecuting Attorney 373 South High Street, 20th Floor Columbus, Ohio 43215-6310
For Appellee Leonard L. Green Brice Road, LLC -	Wayne E. Petkovic Attorney At Law 840 Brittany Drive Delaware, Ohio 43015-7629

Entered March 18, 2008

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

On January 18, 2008, the BTA issued an order requiring the parties to show cause as to why this appeal should not be remanded to the Franklin County

Board of Revision. The order was premised upon the BTA's inquiry as to whether the decision of the BOR, from which this appeal was taken, is a nullity. Only the property owner, Leonard L. Green Brice Road, LLC, responded to the order.

The transcript certified to this board by the Franklin County Auditor establishes that this matter came before the BOR pursuant to an increase complaint filed on March 24, 2006 by the Columbus City School District Board of Education. The BOR convened a hearing on the complaint on September 29, 2006. On October 18, 2006, the BOR certified its decision to the parties, pursuant to the requirements of R.C. 5715.20. S.T. at Ex. 10. In that decision, the BOR increased the 2005 tax year value of the subject property to \$2,900,000.

Subsequently, on November 20, 2006, the BOR certified another entry in which it vacated its October 18, 2006 decision. S.T. at Ex. 10. It appears the BOR convened a subsequent hearing on June 6, 2007. Then, on July 9, 2007, the BOR certified a new decision, in which it retained the auditor's 2005 tax year value of \$660,000. S.T. at Ex. 11. On July 12, 2007, the BOR issued a "correcting letter," in which it rectified a typographical error contained in its July 9, 2007 entry. S.T. at Ex. 12. It is the July 12, 2007 entry from which Columbus has filed its notice of appeal in this matter.

R.C. 5717.01 sets forth the requirements for bringing an appeal before the Board of Tax Appeals as follows:

"An appeal from a decision of a county board of revision may be taken to the board of tax appeals within thirty days after notice of the decision of the county board of revision is mailed as provided in division (A) of section 5715.20 of

the Revised Code.¹ *** Such appeal shall be taken by the filing of a notice of appeal, in person or by certified mail, express mail, or authorized delivery service, with the board of tax appeals and with the county board of revision. If notice of appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing.”

The requirements of R.C. 5717.01 must be strictly complied with before the subject matter jurisdiction of the Board of Tax Appeals may be invoked. *Austin Co. v. Cuyahoga Cty. Bd. of Revision* (1989), 46 Ohio St.3d 192; *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147. One of those requirements is that the notice of appeal must be filed with both the Board of Tax Appeals and the board of revision within thirty days after the certified mailing of the board of revision's decision. *Austin Co.*, supra; *Akron Standard Div. v. Lindley* (1984), 11 Ohio St.3d 10.

Moreover, it has been consistently held that once a BOR renders a decision and certifies notice of that decision under R.C. 5715.20, the BOR retains jurisdiction to reconsider, modify, or alter its decision until such time as thirty days have elapsed or a notice of appeal is filed pursuant to R.C. 5717.01 or 5717.05.

¹ R.C. 5715.20(A) provides: “Whenever a county board of revision renders a decision on a complaint filed under section 5715.19 of the Revised Code, it shall certify its action by certified mail to the person in whose name the property is listed or sought to be listed and to the complainant if the complainant is not the person in whose name the property is listed or sought to be listed. A person's time to file an appeal under section 5717.01 of the Revised Code commences with the mailing of notice of the decision to that person as provided in this section. The tax commissioner's time to file an appeal under section 5717.01 of the Revised Code commences with the last mailing to a person required to be mailed notice of the decision as provided in this division.”

Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision (1999), 87 Ohio St.3d 363; *Madison Local School Dist. Bd. of Edn. v. Lake Cty. Bd. of Revision* (Dec. 4, 1986), BTA No. 1984-C-139, unreported; *Siemientkowski v. Lorain Cty. Bd. of Revision* (June 14, 2002), BTA No. 2001-M-1008, unreported. See, also, *Natl. Tube Co. v. Ayers* (1949), 152 Ohio St. 255; *Lutz v. Evatt* (1945), 144 Ohio St. 341. Any action taken by a BOR thereafter is without statutory authority and is considered a nullity. *Cincinnati*, *Madison Local School Dist. Bd. of Edn.*, and *Siemientkowski*, supra.

In the instant matter, the record indicates that the BOR certified its November 20, 2006 entry, in which it vacated its October 18, 2006 decision, more than thirty days after the October 18, 2006 certification. Nevertheless, in its response, Leonard L. Green Brice Road, LLC (“Green”), represents that “[w]hen the BOR realized it was mistaken in finding a full value of the incomplete construction (the October 18, 2006 decision), it set the matter down for a hearing to be conducted on **NOVEMBER 7, 2006**, at which time it voided its October 18 decision. This was all accomplished within the 30-day period in which the BOR had jurisdiction to act on its previous decision.” (Emphasis in original.) Appellee’s Response, at 2. In support, Green has attached to its response what purports to be a copy of the BOR’s hearing schedule for November 7, 2006, which, at the bottom of a typed schedule, contains a hand-written notation for a hearing on the subject complaint and a notation of “reopen/vacate.”

Initially, we note that nothing in the transcript certified by the county

auditor references a November 7, 2006 hearing. While the transcript includes hearing records for both September 29, 2006 and June 6, 2007, it contains no record for any hearing held on November 7, 2006. Moreover, there is no journal entry prior to November 20, 2006 which purports to vacate the BOR's October 18, 2006 decision. We further have no indication as to who is responsible for the notation on the schedule submitted by Green.

Even if we were to assume that the BOR held a hearing on November 7, 2006, at which it announced its intent to vacate its October 18, 2006 decision, we are unable to overlook the fact that the BOR did not issue its order “to reopen the case and vacate its original decision” until November 20, 2006. S.T. at Ex. 10. We have previously held that a BOR, as a tribunal, is deemed to speak exclusively through its journal, i.e., its decision letters. *Ershco v. Scioto Cty. Bd. of Revision* (Aug. 17, 2001), BTA No. 2000-A-685, unreported, at 2; *Brunswick City School Dist. Bd. of Edn. v. Medina Cty. Bd. of Revision* (May 26, 2006), BTA No. 2004-K-672, unreported, at 2, citing *State ex rel. Fogle v. Steiner* (1995), 74 Ohio St.3d 158. In this regard, the Supreme Court of Ohio has previously determined that the “oral announcement of a judgment or decree by the trial court binds no one. It is axiomatic that the court speaks from its journal. Any other holding would necessarily produce a chaotic condition.” *Bittmann v. Bittmann* (1934), 129 Ohio St. 123, 127 See, also, *Schenley v. Kauth* (1953), 160 Ohio St. 109, at paragraph one of the syllabus (“A court of record speaks only through its journal and not by oral pronouncement or mere written minute or memorandum.”). Cf. *Sun Oil Co. v. Board of Zoning Appeals* (1966), 9 Ohio Misc.

101, at 102 (holding that the time for appeal from a decision of a trial court “does not commence upon a mere verbal announcement of the decision”), and *In re Adoption of Gibson, et al.*, (1986), 23 Ohio St.3d 170, at fn. 3 (“A commentary from the bench, leading up to pronouncement of a decision, is neither adequate to fulfill the requirements of Civ. R. 52, nor is it adequate to provide a disappointed party a solid basis on which to ground an appeal.”).

Thus, in the absence of sufficient evidence to support a holding to the contrary, we are constrained to find that the BOR issued its vacating order after it had lost jurisdiction over the complaint. *Natl. Tube and Madison Local Sch. Dist.*, supra. The Board of Tax Appeals therefore vacates the BOR’s November 20, 2006, July 9, 2007 and July 12, 2007 entries and remands this matter to the BOR with orders to reinstate its October 18, 2006 determination of value.

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