

OHIO BOARD OF TAX APPEALS

Constance C. Dehlendorf,)
)
 Appellant,) (CASE NO. 2007-Z-685
) (REAL PROPERTY TAX)
 vs.)
) (DECISION AND ORDER
)
 Franklin County Board of Revision and)
 Franklin County Auditor,)
)
 Appellees.)

APPEARANCES:

For the Appellant - Constance C. Dehlendorf, pro se
7459 Spanish Bay Court
Blacklick, Ohio 43004

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

Entered February 3, 2009

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

Initially, this appeal is considered upon this board's receipt of a motion to dismiss filed by the county appellees. In said motion, the county appellees argued that this board does not have jurisdiction over the instant appeal since the appellant failed to file her notice of appeal with the Franklin County Board of Revision ("BOR") as required by R.C. 5717.01. The appellant filed a response to the county's motion to dismiss and argued that she did in fact file her notice of appeal with the BOR. In response to said filings, this board convened a hearing during which the parties could

present evidence as to whether the appellant filed her notice of appeal with the BOR as well as the merits of the appellant's appeal.

We will first consider whether this board has jurisdiction to consider the instant matter. The BOR, in the statutory transcript certified to this board, indicates that the BOR's decision was mailed to the appellant on July 20, 2007. The appellant filed her notice of appeal with this board on August 6, 2007. However, according to the statutory transcript and county's motion to dismiss, the appellant did not file a copy of her notice of appeal with the BOR as required by R.C. 5717.01.

R.C. 5717.01 specifically provides the jurisdictional requirements to appeal from a decision of a county board of revision to this board. It reads, in pertinent part, 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. *** 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.*” (Emphasis added.)

The requirements of R.C. 5717.01 are specific and mandatory in nature. When a statute confers the right of appeal, adherence to the terms and conditions set forth therein is essential to the enjoyment of the right conferred. *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147. The statutory requirements for filing a notice of appeal from a decision of a county board of revision are mandatory and jurisdictional. *Bd. of Edn. of Mentor v. Bd. of Revision* (1980), 61 Ohio St.2d 332.

Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board. See *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68.

During the hearing before this board, the appellant and her husband, Mr. Dehlendorf, provided testimony to the effect that they hand delivered a notice of appeal to this board and to the BOR on August 6, 2007. More specifically, Mr. Dehlendorf testified as follows:

“On August the 6th of 2007, my wife and I came downtown for the sole purpose of delivering the appeal to this office and to the county office. My wife circled the block while I came up into this office and dropped off the appeal and then we proceeded on to the county building, where she circled the block while I dropped off that.

“I went back to the county building last week to retrace my steps, and I vividly now remember the circumstances. I got off the elevator. I *** turned to the left and was told to go across the hall and turn to the left and that the first office on the right would be where I should file the appeal. There was a counter there and I remember now that there was nobody there behind the counter, and there was a bell, and that bell is still there, and I remember now ringing that bell and nobody coming out. And I just left the appeal on the counter and came back down because my wife was circling the block to get in the car to go back home.

“So that is what I recall having happened. And I went back last week, as I say, just to make sure that I could refresh my memory, and I refreshed my memory, I did.”
H.R. at 8-9.

Thereafter, Mr. Dehlendorf was cross-examined by counsel for the county. After considering the testimony provided by the appellant and her husband, Mr. Dehlendorf, we find that there is sufficient competent and probative evidence to conclude that the appellant filed a copy of her notice of appeal with the BOR on August 6, 2007. See *Cardinal Fed. S. & L. Assn. v. Bd. of Revision* (1975), 44 Ohio

St.2d 13 (the BTA is vested with wide discretion in determining the weight to be given evidence and credibility of witnesses). See, also, *KRS Holdings, Inc. v. Licking Cty. Bd. of Revision* (June 17, 1994), BTA No. 1993-M-1132, unreported (Board of Tax Appeals had jurisdiction over an appeal where the appellant testified under oath that he personally delivered a copy of his notice of appeal to the county board of revision on the same date that he mailed his notice of appeal to this board); *Dietrich v. Tuscarawas Cty. Bd. of Revision* (Interim Order, Nov. 15, 1996), BTA No. 1996-M-624, unreported (denying motion to dismiss where appellant testified before this board that when he handed his notice of appeal to an employee of the county board of revision who copied the form and instructed him to mail copies to two different locations in Columbus, he assumed that she would retain any copies required by the county board of revision). Cf. *Consolidated Freightways, Inc. v. Summit Cty. Bd. of Revision* (1986), 21 Ohio St.3d 17.

Based on the above, we find that the appellant timely filed a notice of appeal with both this board and the BOR as required by R.C. 5717.01. The jurisdiction of this board was therefore properly invoked.

We next consider the merits of the instant appeal. The appellant appeals from a decision of the BOR wherein the BOR determined the taxable value of the subject property for tax year 2006. The subject real property, the appellant's residence, is located in the Jefferson Township-Gahanna Jefferson School District taxing district, Franklin County, Ohio, and appears on the auditor's records as permanent parcel number 170-002096. The value of the parcel, as determined by the auditor, is as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 102,800	\$ 35,980
Building	371,300	130,000
Total	\$ 474,100	\$ 165,980

After convening a hearing at which the appellant and Mr. Dehlendorf testified, the BOR decreased the value of the subject property by \$59,100 for tax year 2006 and determined the value of the subject parcel as follows:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 102,800	\$ 35,980
Building	312,200	109,270
Total	\$ 415,000	\$ 145,250

In her notice of appeal filed with this board, appellant contends that the auditor and BOR overvalued the subject property and seeks a valuation for the subject of \$300,000. During the hearing before this board and the BOR, the appellant argued that the value of her home should be reduced due to the significant water-related problems that she has experienced.

More specifically, during the hearing before this board, Mr. Dehlendorf testified that upon investigation as to why the subject's sump pump was running continuously, it was discovered that water was flowing along the sanitary sewer in the gravel bedding located on the subject property. H.R. at 12. Mr. Dehlendorf further explained that the subject property is located at the low point in their part of the development and an underground stream was flowing along the sanitary sewer in the

gravel bedding and flowing into the foundation of the subject. Id. “The water was seeping down and getting into the perimeter drain and then getting into the sump pump hole,” thereby causing the sump pump to run continuously. Id. As a result of this situation, Mr. Dehlendorf explained that a pump was installed in the subject’s side yard to pump the water out and into a pond located behind the subject’s back yard so as to prevent the water from flowing into the subject’s sump pump hole and preclude the sump pump from running continuously. Id.

In addition, Mr. Dehlendorf testified that a sanitary sewer lift station located near the subject has failed four times. H.R. at 13. While one such failure was minor, three such failures were major and resulted in the flooding of the subject’s basement with raw sewage and damage caused thereto. Id. The first lift station failure was in the midst of the ice storm in December 2004. Id. At this time, personal items stored in the basement were lost. Id. The appellant introduced into evidence an invoice in the amount of \$2,344.32 for the cost of cleanup which was borne by the appellant’s homeowner’s insurance with the exception of a \$500 deductible which was paid by the appellant. Appellant’s Ex. 6.

The lift station also failed in June 2006 and September 2007. H.R. at 13. Similarly, the appellant introduced into evidence an invoice for the cost of cleanup of the June 2006 failure which was borne by the water and sewer district. Appellant’s Ex. 5. With respect to the September 2007 failure, the appellant introduced a document entitled “authorization to perform services and direction of payment.” Appellant’s Ex. 4. Said cost was also borne by the water and sewer district. H.R. at 18.

The appellant argues that the value of the subject property is less than that determined by the BOR in light of the foregoing water problems. Additionally, the appellant argues that while cleanup efforts have been made in the subject's basement, the lift station could fail again at any time. Accordingly, the appellant argues that the value of the subject is diminished far beyond the cost of the cleanup as outlined above. H.R. at 35.

The appellant also argues that while a house located next door has sold, it should not be considered a comparable sale for purposes of determining the value of the subject because the sales price was not reflective of market value of such home. H.R. at 31-34.

The county did not challenge the circumstances described by Mr. Dehlendorf regarding the sale of the house located next door to the subject nor did the county attempt to use such sale as a comparable sale. Before this board, the county did not present any additional evidence beyond that which was present in the statutory transcript. The county did note that the BOR reduced the value of the subject for tax year 2006 such that the value would remain unchanged from tax year 2005. H.R. at 38.

Initially, this board notes the decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, 337, and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, 495, wherein the Supreme Court held that an appealing party has the burden of coming forward with evidence in support of the value which it has claimed. Once competent and probative evidence of true value has been presented, the opposing parties then have a

corresponding burden of providing evidence which rebuts appellant's evidence of value. *Id.*; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319.

We acknowledge that "Ohio law has long recognized that an owner of either real or personal property is, by virtue of such ownership, competent to testify as to the market value of the property." *Smith v. Padgett* (1987), 32 Ohio St.3d 344, 347. However, while Mr. Dehlendorf may be competent to offer an opinion as to the value of the subject property, the testimony he offered must also be probative and credible as to market value. The record before us indicates that while Mr. Dehlendorf is a real estate developer and a licensed real estate broker, he is not an appraiser by trade and does not have a background or training in the appraisal of real property. H.R. at 23-24. Accordingly, we consider Mr. Dehlendorf's review of the subject property to be from the perspective of a layperson with insufficient support from the overall market for the opinions he expressed. The record lacks competent and probative evidence to support Mr. Dehlendorf's premise regarding a value of \$300,000.

The appellant is not seeking a dollar-for-dollar reduction in value based on the costs of cleanup, H.R. at 35, an argument which has been previously rejected. See *Throckmorton v. Hamilton Cty. Bd. of Revision* (1996), 75 Ohio St.3d 227 ("Evidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value. It is the decrease in true value that may result from the need for repairs that is the important factor to be determined by the BTA."). See, also, *Franklin v. Hamilton Cty. Bd. of Revision* (June 14, 1996), BTA No. 1995-T-792, unreported (wet basement was among claimed defects); *Hansen v.*

Cuyahoga Cty. Bd. of Revision (July 6, 2007), BTA No. 2006-Z-752, unreported, at 5 (claimed defect was “water damage [that] has occurred in the basement due to the poor water drainage on the subject property”); *Rinehart v. Montgomery Cty. Bd. of Revision* (July 6, 2007), BTA No. 2006-B-1257, unreported, at 4 (“the basements or faucets leak”); *Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576.

However, the burden is upon the appellant to submit sufficient probative, competent evidence to support his claim for a reduction in value. *Zindle v. Summit Cty. Bd. of Revision* (1989), 44 Ohio St.3d 202; *R.R.Z. Assoc. v. Cuyahoga Cty. Bd. of Revision* (1988), 38 Ohio St.3d 198. A party who asserts a right to a decrease in the value of real property has the burden of proving his right to the value asserted. *Cleveland Bd. of Edn.*, supra. Despite Mr. Dehlendorf’s thorough explanation of the water issues surrounding the subject and how they may negatively affect the subject property’s value, the appellant failed to specifically address the corresponding decrease in market value in the subject due to such deficiencies. The appellant has failed to submit sufficient probative and competent evidence which would quantify the effect the condition has had on the subject’s value. Overall, the appellant has failed to present sufficient probative and competent evidence in support of her contention that the subject should be valued at \$300,000.

Having reviewed the evidence before us, we conclude that the evidence presented by the appellant does not constitute sufficient, probative evidence of the subject’s value and that the appellant has not met her burden of proof. Therefore, we will rely upon the BOR’s valuation of the subject, which took into consideration the evidence offered by the appellant to the BOR.

Accordingly, based upon the preponderance of evidence currently before this board, the value of the subject for tax year 2006 shall be:

	TRUE VALUE	TAXABLE VALUE
Land	\$ 102,800	\$ 35,980
Building	312,200	109,270
Total	\$ 415,000	\$ 145,250

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

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