

OHIO BOARD OF TAX APPEALS

Mathieu Stremstoerfer,)	CASE NO. 2008-A-289
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	ORDER
)	
Franklin County Board of Revision and Franklin County Auditor,)	(Denying Motion to Dismiss)
)	
Appellees.)	

APPEARANCES:

For the Appellant		- Mathieu Stremstoerfer, pro se 742 Oak Street Columbus, Ohio 43205
For the County Appellees		- Ron O'Brien Franklin County Prosecuting Attorney Paul M. Stickel Assistant Prosecuting Attorney 373 South High Street, 20 th Floor Columbus, Ohio 43215

Entered January 6, 2009

This appeal is now considered by the Board of Tax Appeals following the receipt of a motion to dismiss filed by the county appellees. No response to said motion from the above-named appellant was received. Said motion provides the following:

“Now comes Appellee, the Franklin County Auditor and the Franklin County Board of Revision, and moves this Board to dismiss the notice of appeal filed herein by Appellant, Mathieu Stremstoerfer, on the grounds that the Board lacks jurisdiction over this appeal. Specifically,

Appellant did not file a copy of the notice of appeal for the case with the Franklin County Board of Revision or the Ohio Board of Tax Appeals within thirty days of the Board of Revision decision, as required by R.C. 5717.01.”

The subject motion was premised upon the statutory requirements of R.C. 5717.01, which specifically provide 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.)

A review of the record before us indicates that the board of revision’s decision was issued on October 19, 2007, and mailed to appellant on November 5, 2007. Appellant’s notice of appeal was deemed filed with this board on March 7, 2008, and was filed¹ with the county board of revision on December 5, 2007. Thus, the county’s motion with regard to the filing of the notice of appeal with the BOR must be denied, as evidence in the record demonstrates that such notice was timely filed. With regard to the notice of appeal filed with this board, information has been submitted by appellant to indicate that such notice was filed by fax on December 5, 2007, contrary to this board’s record of docketed appeals. Due to such discrepancy,

¹ Contrary to the information contained in the supporting documentation of the appellees’ motion, the statutory transcript reflects that a copy of appellant’s notice of appeal to this board was filed on December 5, 2007, with the Franklin County Board of Revision, according to the time stamp placed thereon. S.T., Ex. 7.

the board must inquire further of appellant regarding the circumstances surrounding such alleged filing.

As a creature of statute, we have only the jurisdiction, power, and duties expressly given by the General Assembly. *Steward v. Evatt* (1944), 143 Ohio St. 547; *Leiphart Lincoln-Mercury, Inc. v. Bowers* (1958), 107 Ohio App. 259. 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. *American Restaurant and 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.

As strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board, and since the record does not definitively demonstrate when appellant filed his notice of appeal with this board, we must convene a hearing to determine whether the Board of Tax Appeals has jurisdiction to consider the instant matter. See *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68. Further, in the interests of judicial economy, the board will consider not only the jurisdictional sufficiency of the instant notice of appeal, but also the merits of this matter as they relate to the valuation of the subject property. All parties should come prepared to offer any relevant testimony and evidence regarding the filing of the notice of appeal with this board as well as the subject property's valuation.

Accordingly, it is the order of the Board of Tax Appeals that the instant motion must be, and hereby is, denied. This matter is scheduled for hearing on February 10, 2009, at 9:00 a.m. at the offices of the Board of Tax Appeals, 30 East Broad Street, 24th Floor, Columbus, Ohio 43215.

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