

OHIO BOARD OF TAX APPEALS

Oxford Village Realty, LLC,¹)
)
Appellant,) (REAL PROPERTY TAX)
)
vs.) DECISION AND ORDER
)
Franklin County Board of Revision,)
Franklin County Auditor, and Board of)
Education of the Columbus City Schools,)
)
Appellees.)

APPEARANCES:

- For the Appellant - Kemp, Schaeffer, & Rowe Co., L.P.A.
Michael N. Schaeffer
88 West Mound Street
Columbus, Ohio 43215-5018

- For the County Appellees - Ron O'Brien
Franklin County Prosecuting Attorney
Paul M. Stickel
Assistant Prosecuting Attorney
373 South High St., 20th Floor
Columbus, Ohio 43215-6310

- For the Appellee Bd. of Edn. - Rich & Gillis Law Group, LLC
Jeffrey A. Rich
Mark H. Gillis
300 East Broad St., Suite 300
Columbus, Ohio 43215-3756

Entered April 28, 2009

Ms. Margulies and Mr. Dunlap concur. Mr. Johrendt not participating.

This appeal is now being considered upon a motion to dismiss filed herein under date of January 2, 2009 by counsel for the county appellees. No response to this motion has been filed by appellant.

¹ The statutory transcript indicates that the owner of the subject property was Oxford Campus 1, LLC. S.T.

The motion states that the appellant did not file a copy of its notice of appeal with the Franklin County Board of Revision (“BOR”) as required by R.C. 5717.01 and requests that the Board of Tax Appeals (“BTA”) dismiss the notice of appeal. The statutory transcript (“S.T.”) certified to this board by the Franklin County Auditor (“auditor”) indicates that the decision of the BOR was mailed to all parties as prescribed by R.C. 5715.20 on May 28, 2008. The auditor’s certification, dated December 23, 2008, also states that the appellant failed to serve a copy of the notice of appeal upon the BOR.

R.C. 5717.01 provides, in relevant part:

“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 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 Ohio Supreme Court has consistently held that the requirements of R.C. 5717.01 are mandatory, and that compliance therewith is essential to vest jurisdiction in the Board of Tax Appeals. *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68. Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision* (1989), 46 Ohio St.3d 192. See, also, *Mentor Exempted Village School Dist. Bd. of Edn. v. Lake Cty. Bd. of Revision* (1980), 61 Ohio St.2d 332; *Cleveland City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1973), 34 Ohio St.2d 231.

The Board of Tax Appeals has no express or implied equity jurisdiction. *Columbus Southern Lumber Co. v. Peck* (1953), 159 Ohio St. 564. 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. 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. As strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board, and since the record demonstrates that the appellant did not file its notice of appeal with the board of revision within thirty days of the mailing of the decision letter issued by the BOR, the Board of Tax Appeals does not have jurisdiction to consider the instant matter.

Given the record before us, we necessarily conclude that the notice of appeal was not timely served on the BOR and that we lack the requisite jurisdiction over the instant appeal. It is the decision and order of the Board of Tax Appeals that the instant matter be dismissed.

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