

Helmuth K. Makoben,	)	CASE NO. 96-M-895
	)	
Appellant,	)	
	)	(REAL PROPERTY TAX)
vs.	)	
	)	
Erie County Board	)	DECISION AND ORDER
of Revision and the	)	
Erie County Auditor,	)	
	)	
Appellees.	)	
	)	

APPEARANCES:

For the Appellant-	Helmuth K. Makoben, <u>Pro Se</u> 5243 Portage Drive Vermilion, OH 44089
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For the County- Appellees	Kevin J. Baxter Erie County Prosecuting Attorney By: James R. Gorry Special Prosecuting Attorney Teaford, Rich & Wheeler 20 E. Broad Street Columbus, OH 45402
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Entered August 1, 1997

Mr. Johnson, Ms. Jackson and Mr. Manoranjan concur.

This cause and matter comes on to be considered by the Board of Tax Appeals upon a purported Notice of Appeal filed herein on July 8, 1996. This appeal is from a decision of the Erie County Board of Revision (BOR) dated June 13, 1996, wherein that Board determined the value of certain real property for tax year 1995.

The subject property is located in the Vermilion City taxing district of Erie County, Ohio and identified on the auditor's records as parcel number 18-01210.00. The property is improved with a four bedroom, two and one-half bath home

containing approximately 2,800 square feet. The home was originally built in the early 1950's. The property is situated directly on Superior Lagoon and also houses a 25 foot by 75 foot dock area.

Being dissatisfied with the auditor's assessment of his property for tax year 1995, the appellant, Helmuth K. Makoben, filed a complaint with the Erie County BOR. The BOR, after hearing and review, found the auditor's previously assessed values to be correct. Those values, as determined by BOR, are as follows:

Parcel No. 18-0210.00

	TRUE VALUE	TAXABLE VALUE
Land	\$182,250	\$ 63,790
Building	112,460	39,360
Total	\$294,710	\$103,150

Before this Board, the appellant contends that the correct taxable value of the subject should be determined as follows:

Parcel No. 18-0210.00

	TRUE VALUE	TAXABLE VALUE
Land	\$145,000	\$ 50,750
Building	83,400	29,190
Total	\$228,400	\$ 79,940

This matter is considered by the Board of Tax Appeals upon the Notice of Appeal, the Statutory Transcript certified to this Board by the Erie County Auditor, and the testimony and other evidence adduced at the hearing held before this Board.

The Statutory Transcript was certified to this Board by Paul D. Strickfaden, Auditor of Erie County. Through the transcript, Auditor Strickfaden averred that the BOR did not receive a copy of the Notice of the Appeal filed with this Board. At the hearing held on this matter, Mr. Makoben, confirmed that he did not file a Notice of Appeal with the BOR. (H.R. p. 6)

R.C. 5717.01 outlines the steps which must be taken to appeal a decision of a county board of revision. That statute specifically requires both this Board and the board of revision to be served with a notice of appeal within thirty days of the mailing of the board of revision's decision.

An appellant must comply with all the jurisdictional requirements imposed by the General Assembly before this Board may review questions arising from determinations of state taxing authorities. Mid American Machine Tools v. Lindley (1981), 68 Ohio St.2d 91; Bd. of Edn. of Mentor v. Lake Cty. Bd. of Revision (1980), 61 Ohio St.2d 332. Although counsel for the county appellees did not file a motion to dismiss, the lack of this Board's jurisdiction to hear an appeal is not waivable. See Jenkins v. Keller (1966), 6 Ohio St.2d 122. Furthermore, jurisdiction may not be conferred upon this Board, by agreement of the parties or otherwise, where such jurisdiction is lacking. See Sekerak v. Fairhill Mental Health Ctr. (1986), 25 Ohio St.3d 38.

Appellant claims that he followed the instructions relayed to him by the Erie County Auditor when he received his

decision from the BOR. That letter, which was mailed to this Board on January 13, 1997, states, in pertinent part:

"Dear Mr. & Mrs. Makoben:

"I am enclosing a copy of your decision letter from the Board of Revision. If you don't agree with this decision you may file with the Board of Tax Appeals. I am enclosing a form."

While the appellant contends that the above captioned letter constitutes instructions regarding the proper method of appeal, this Board finds no language which would appear to supersede the requirements of R.C. 5717.01. Even if we were to construe the letter as providing Mr. Makoben with explicit instructions concerning further appeal, this Board has previously held a party is not excused from the requirements of R.C. 5717.01 even if it follows instructions mailed from a board of revision which appear to conflict with the requirements of the statute. Jerry Silver/Silver Family Trust v. Clermont Cty. Bd. of Revision (Dec. 30, 1993), B.T.A. No. 92-B-1012, unreported. Thus, Mr. Makoben's defense of his actions does not cure his failure to file with the BOR.

While we find we are required to dismiss the appeal before this Board, we note that both parties to the appeal presented evidence of value. Mr. Makoben presented the appraisal report of Jay Arthur Berk III, SRA, of J.A. Berk & Associates. That written report indicated a value for the subject of \$228,400. The BOR presented the testimony and appraisal report of Mr. Richard H. Hoffman, CAE, ASA, SRPA,

president of Appraisal Research Corporation. Mr. Hoffman opined that the value of the subject property as of tax lien date was \$330,000.

The law in this state relating to the assessment of real property requires that property be valued at its "true value". R.C. 5713.03. Case law dictates that the best evidence of "true value" is a recent, arm's length sale. State, ex rel. Park Investment Co. v. Bd. of Tax Appeals (1964), 175 Ohio St. 41; In re Estate of Sears (1961), 172 Ohio St. 443.

The subject property presently before this Board has not been sold since the current owners purchased it in 1977. In such cases, had jurisdiction been proper, this Board would have considered other evidence of value, such as appraisal evidence, to determine "true value". First Union Real Estate Equity & Mtge. Investments v. Cuyahoga Cty. Bd. of Revision (1990), 53 Ohio St.3d 236.

When the Board is presented with appraisals which are approximately \$100,000.00 apart, we remind the parties that expert opinion evidence, under any circumstances, is but an opinion, and the reliability of that opinion depends upon the skill and ability demonstrated by the expert as well as the expert's ability to find truly comparable properties in the marketplace. In such cases, the Board of Tax Appeals is vested with wide discretion in determining the weight to be given to the evidence before us and the credibility of the witnesses.

Wynwood Apartments, Inc. v. Bd. of Revision (1979), 59 Ohio St.2d 34.

Thus, there are no guarantees when seeking a change from a value assessed by a county auditor or determined by a county board of revision. It is quite possible that this Board could have reviewed the evidence before us and determined that an increase in value was warranted. See Fenton v. Wayne Cty. Bd of Revision (Jan. 13, 1995), B.T.A. Case No. 94-K-647, unreported. See, also, Sharon Village Ltd. v. Licking Cty. Bd. of Revision (1997), 78 Ohio St.3d 479.

However, given the fact that the appellant failed to properly perfect an appeal to this Board, we find that this Board is without jurisdiction to consider the value of the subject property. It is therefore the order of this Board that the appellant's appeal must be, and hereby is, dismissed.

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