

## OHIO BOARD OF TAX APPEALS

Cleveland Bluffs Development, LLC, <sup>1</sup>	)	CASE NOS. 2002-V-1632
	)	2002-V-1766
Appellant/Appellee,	)	2002-V-1767
	)	
and	)	(REAL PROPERTY TAX)
	)	
Cleveland Municipal School District Board of Education,	)	DECISION AND ORDER
	)	
Appellant/Appellee,	)	
	)	
vs.	)	
	)	
Cuyahoga County Board of Revision and the Cuyahoga County Auditor,	)	
	)	
Appellees.	)	

APPEARANCES:

For Cleveland Development, LLC	-	Karen H. Bauernschmidt Co., LPA Karen H. Bauernschmidt 700 West St. Clair Avenue Suite 214 Cleveland, OH 44113
For the Cleveland Municipal School District BOE	-	Britton, Smith, Peters & Kalail David H. Seed Summit One, Suite 540 4700 Rockside Road Cleveland, OH 44131-6814
For the County Appellees	-	William D. Mason Cuyahoga County Prosecuting Attorney Gregory B. Rowinski Assistant Prosecuting Attorney Courts Tower, Ninth Floor 1200 Ontario Street Cleveland, OH 44113

Entered December 19, 2003

Ms. Margulies, and Mr. Eberhart concur. Ms. Jackson dissents.

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<sup>1</sup> Pursuant to our discussion, infra, we are correcting the caption of the appellant to include its full name.

This cause is considered by the Board of Tax Appeals upon a motion filed on behalf of the Cleveland Municipal School District Board of Education (“BOE”). In its motion, the BOE asks this board to remand the present appeal to the Cuyahoga County Board of Revision (“BOR”) with instructions to determine the value of the property owned by appellant Cleveland Development, LLC (“Cleveland Development”) for tax year 2000. The BOE argues that the decision of the BOR erroneously encompasses realty not owned by Cleveland Development at the time its complaint was filed.

The motion is considered upon the statutory transcript (“S.T.”) and evidence received at a motion hearing (“H.R.”) conducted before the board. At hearing, counsel for the BOE presented various certified copies of county records, many of which are contained in the statutory transcript. Neither counsel for Cleveland Development nor the county appellees attended said hearing. Counsel for Cleveland Development has filed a memorandum contra to the BOE’s motion.

Although not raised as grounds for dismissal by the BOE, the evidence submitted at hearing before this board indicates that the subject property owner’s name is actually Cleveland Bluffs Development, LLC. (See Exhibit K, certified copy of deed, and Exhibit M, updated certified property record card.) The original complaint before the BOR (DTE Form 1) was filed on behalf of the property owner erroneously listing the owner as: “Cleveland Development, LLC.” (S.T. at A)

It is presumed that the information requested on the DTE Form 1 is meant to expedite the orderly administrative processing of complaints and to give the board of revision an opportunity to investigate the truthfulness of the alleged facts prior to the hearing. See *Stanjim Co. v. Mahoning Cty. Bd. of Revision* (1974), 38 Ohio St.2d 233, at 236. Specifically, in determining jurisdictional requirements contained on the real property and manufactured home complaint form, one of the standards that the Supreme Court has utilized, in applying the substantial compliance test, is whether the inclusion of particular information thereon “run[s] to the core of procedural efficiency.” *Akron Standard Div. v. Lindley* (1984), 11 Ohio St.3d 10. Later, the Supreme Court in *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision* (1998), 80 Ohio St.3d 591, stated:

“In *Renner v. Tuscarawas Cty. Bd. of Revision* (1991), 80 Ohio St.3d 142, \*\*\*, a property valuation case, this court explained the *Akron Standard* decision:

‘If the omitted requirement runs to the core of procedural efficiency, than the requirement is essential, the omission is not substantial compliance with the statute, and the appeal is to be dismissed.’” *Id.* at 596.

In *Buckeye Foods v. Cuyahoga Cty. Bd. of Revision* (1997), 78 Ohio St.3d 459, the Supreme Court affirmed the dismissal of a complaint for failure of the complainant to properly identify itself. In *Buckeye Foods*, a “fictitious name” was used in violation of R.C. 1329.10(B), which requires one to register with the Secretary of State before commencing or maintaining an action in a fictitious name. Additionally, in *Buckeye Foods*, there were at least five other entities that used the

“Buckeye Foods” name as a part of their name. Thus, it was unclear as to which entity the fictitious name made reference. In its decision, the court stated that the complainant must “be better identified than occurred here” and that one must have “the ability to discern who is complaining about the value of real property.” *Id.* at 462.

This board has previously held, in certain circumstances, that the failure to properly identify the owner of the property runs to the core of procedural efficiency. See *The Clorox Company v. Cuyahoga Cty. Bd. of Revision* (Nov. 16, 2001), BTA Nos. 2000-T-995, 2000-T-1009, and 2000-T-1010, unreported (finding that the BOR had no jurisdiction over a complaint identifying property actually titled in the name of Clorox’s wholly owned subsidiary, Household Products Manufacturing Company); *Ritz Carlton Hotel Partnership v. Cuyahoga Cty. Bd. of Revision* (May 11, 2001), BTA No. 1998-L-355, unreported, (finding a complaint was jurisdictionally defective because the property was titled in the name of a separate partnership, despite the county’s records that erroneously listed the property in the name of the complainant.); *PMC Commercial Trust v. Union Cty. Bd. of Revision* (May 9, 2003), BTA No. 2002-G-1295, unreported, (finding that a complaint was jurisdictionally defective when the property was titled in the name of another entity, even though the complainant had a 99 percent interest in the titled owner which also bore a similar name.)

In *Trotwood-Madison City School Dist. v. Montgomery Cty. Bd. of Revision* (June 30, 1997), BTA No. 1995-S-1282, unreported, we stated:

“A review of R.C. 5715.19 and R.C. 5715.12 indicates that the instruction on DTE Form 1 requiring the complaint to list the owner of the property is intended to elicit statutorily required

information. The name of the property owner is necessary to enable the auditor to notify the property owner that a complaint has been filed against the property and to enable the BOR to notify the property owner of the time and place of any hearings relating to such complaint.” Id. at 7-8.

In *Triple V's Holding v. Cuyahoga Cty. Bd. of Revision* (Apr. 24, 2000),

BTA No. 1997-K-1701, unreported, we held:

“This board has previously discussed the need for a complainant to correctly identify the owner of a property whose valuation is being challenged, concluding that such need runs to the core jurisdiction of a county board of revision to consider the value of a given property. \*\*\* The clear import of this requirement is to ensure that in those instances in which a complaint is filed by someone other than the owner, the owner receives the notices attendant with such filing. \*\*\* In the present case, although the incorrect owner was identified on the complaint, we consider such failure to be harmless given the fact that the actual owner was the complainant and said owner has participated throughout the proceedings before the BOR and this board.” Id. at 5-6.

In *Cleveland Municipal School Dist. v. Cuyahoga Cty. Bd. of Revision*

(Interim Order, June 15, 2001), BTA Nos. 1999-M-1348, 1349, unreported, we held

that a complaint that erroneously identified the owner as being “Sherwin Williams Company,” when the titled owner was “Sherwin Williams Development Corporation”

was nevertheless valid. Specifically, we held:

“The question of how specifically an owner must be identified is not new. \*\*\* [discussing *Trotwood-Madison City School Dist.*, supra] This board concluded that the property owner must be identified on the face of the complaint so that the auditor may perform his statutory duty to notify such owner of the pending action. However, following that decision, the Ohio Supreme Court issued *Cleveland Elec. Illum Co. v. Lake Cty. Bd. of Revision* (1998), 80 Ohio St.3d 591. Therein the Court concluded that the ‘full compliance’ standard necessary to confer jurisdiction in a board of revision was met if minimal factual

information was provided through the complaint. Instead of requiring the property owner therein to fully complete the complaint form, the Court held that if a county auditor was able to meet statutory obligations, core jurisdiction was met.

“In *Countryview Columbus, Ltd. v. Franklin Cty. Bd. of Revision* (Interim Order, Nov. 6, 1992), B.T.A. No. 92-D-251, unreported, this Board concluded the Groveport Madison Local Schools Board of Education was properly named on the face of the complaint even though it was listed without the words ‘board of education.’ The Board concluded that to hold otherwise would create a hypertechnical reading of the statutes prescribing jurisdiction.” Id. at 3-4.

In the facts before us, the omission amounts to the failure to include the word “Bluffs” in the property owner’s name. This omission is similar to the facts before us in *Triple V’s Holding*, supra, and *Cleveland Municipal School Dist.*, supra. As we held in *Cleveland Municipal School Dist.*, supra:

“While the Supreme Court has never ‘encouraged or condoned disregard for procedural schemes logically attendant to the pursuit of a substantive legal right, it has been unwilling to find or enforce jurisdictional barriers not clearly statutorily or constitutionally mandated, which tend to deprive a supplicant of a fair review of his complaint on the merits.’ *Nucorp, Inc. v. Bd. of Revision* (1980), 64 Ohio St.2d 20, 22. In the present matter, the property owner slightly misstated the titleholder’s name. There is no allegation that the misstatement caused the BOE any hardship in identifying the property in issue or obtaining information from the proper party. Clearly, the error made in the present case appears minimal, at best, and would require a hypertechnical reading of both the jurisdictional statutes as well as the complaint itself in order to grant the BOE’s request.” Id. at 4-5.

There appears to be no prejudice resulting from the property owner’s misnomer in this case. We find that the error in the listing of the property owner’s name on the face of the complaint does not run to the core of procedural efficiency,

and therefore, we have the requisite jurisdiction to consider the merits before us. Additionally, we sua sponte correct the caption of the instant appeals to include the appellant's full name.

Now turning to the merits of this case, in the original complaint filed before the BOR, Cleveland Development describes the subject parcel to be 102-02-001. Based on our review of the record, it appears that the property record card (relevant for tax year 2000) for the subject parcel indicates that the Cuyahoga County Auditor ("auditor") had historically listed, assessed, and valued parcel numbers 102-02-002, 102-02-003, and 102-02-004 together with the lead parcel 102-02-001, the purported subject of the underlying complaint. (See S.T. Exhibit D, property record card, which contains a printed notation: "LW [list with] 10202002 to 10202004" and further contains the handwritten notations: "LW: 102-02-002, 003 & 004.")

Cleveland Development's predecessor in title was 1476 Davenport Limited Partnership<sup>2</sup> ("1476"). The subject property was a part of an assemblage of previously subdivided lots and vacated roadway owned by 1476 that totaled 11.7128 acres. The total assemblage contained a multitude of individual parcels, some of which mirrored the old lot lines of the original subdivision plat, and other parcels contained multiple lots and portions of lots. In 1999, 1476 conveyed a portion of the assemblage, which included parcel 102-02-003, to WXYC-TV. (See, S.T., Exhibit D, property record card, hearing audio-tape.)

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<sup>2</sup> As was discussed in Cleveland Development's memorandum contra, Mr. James Kassouf, who testified before the BOR, is a principal of Cleveland Development, LLC as well as 1476 Davenport LP.

On July 17, 2000, 1476 recorded a lot split and consolidation plat (H.R., Exhibit D, “plat”) that reconfigured and consolidated the remaining assemblage into two larger lots: “parcel B” containing 6.125 acres and “parcel C” containing 3.0406 acres.<sup>3</sup> This plat not only reflects the division of the remaining assemblage into two separate units, but includes the multiple parcel numbers that had been previously assigned by the auditor. The record before us is unclear as to where the auditor’s parcel boundaries exist, or how they relate to the new configurations of “parcel B” and “parcel C.” The BOE contends that the auditor failed to give effect to the July 2000 plat and continued to carry the multitude of parcel numbers that the assemblage was comprised of on his tax list and duplicate for tax year 2000.

On October 4, 2000, a deed was recorded evidencing that Cleveland Development acquired title to “parcel B.” Before the BOR, Mr. Kossouf described that a new office building was subsequently constructed upon “parcel B.” Although the deed’s legal description refers to “parcel B” in the plat, it additionally describes the auditor’s parcel numbers:

“Permanent Parcel Numbers: 102-02-001 (held with Parcel Nos. 102-02-002 through 102-02-004); 102-06-102 through 102-06-107; 102-07-001 through 102-07-009; 102-07-011 through 102-07-019.” (H.R., Exhibit K.)

In comparing “parcel B” as presented on the plat with the recitation of parcel numbers on the face of the subject property’s deed, as well as the property

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<sup>3</sup> The plat refers to the consolidated lots as “parcels” and includes “parcel A,” which is the property previously conveyed to WKYC-TV in 1999. (H.R., Exhibit D)

record card, it appears they are not congruent. On the plat, “parcel C” encompasses an area that amounts to either portions of, or the totality of, parcel numbers 102-02-001 and 102-02-002.<sup>4</sup> Furthermore (despite its inclusion upon the face of the deed), parcel 102-02-003 had been previously transferred to WKYC-TV in 1999.<sup>5</sup> Nevertheless, the deed conveying “parcel B” was approved by the Cuyahoga County Engineer and by the auditor, who referenced it as being “Parcel No. 102-02-001 et al.” (See conveyance stamp upon the deed’s legal description, H.R., Exhibit K) Consistent with this confusion in parcel numbers, the BOE presented a certified copy of an August 2001 mortgage deed and security agreement granted by 1476 for the remaining portion of the assembly which includes a legal description that refers to “parcel C” of the plat and nevertheless describes the property as parcel “Nos. 102-02-001, 002, & 004.” (H.R., Exhibit Q)

The original complaint filed March 29, 2001 on behalf of Cleveland Development for tax year 2000 lists parcel 102-02-001 as the subject parcel. Consistent with the unadjusted auditor’s property record card, Cleveland Development also lists parcel numbers 102-02-002 and 102-02-004 under the “address of property” column of the complaint form. Based on the information before us, it appears that at the time the complaint was filed, a portion of the property was owned by Cleveland Development and a portion of the property was separately owned by 1476.

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<sup>4</sup> Problematic to our attempt to sort out the state of title as it relates to the property before us is the inability to discern from the county tax maps, plat maps, and parcel card, where the parcels’ boundaries actually are.

<sup>5</sup> This portion is correctly identified and had been removed from the property record card, pursuant to its handwritten notations. (S.T., Exhibit D)

The record reflects that the auditor gave effect to the plat beginning in 2001. (H.R., Exhibit M) The new property record card for 2001 lists Cleveland Development as the owner and further lists 6.125 acres (“parcel B”) under parcel number 102-02-004, and includes parcel numbers 102-06-103 through 107; 102-07-001 through 009; and 102-07-011 through 019. Conspicuously absent from the updated parcel card is any reference to (“parcel C”) parcel nos. 102-02-001 and 102-02-002.

As we construe the complaint and record before us, the BOR had jurisdiction over the property owned by Cleveland Development. Based upon what appears to be an inconsistency in the deed, and further complicated because of the failure of the auditor to relist the subject property pursuant to the plat for 2000, the BOR erroneously proceeded to consider the totality of parcel 102-02-001 (including parcels 102-02-002 and 102-02-004), which appear to include “parcel C,” owned by 1476 at the time the complaint was filed.

In its motion to remand, the BOE argues that the BOR exceeded its jurisdictional authority in adjusting the value of parcel 102-02-001 and its included parcels. We agree.

Similar to the facts in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Apr. 20, 2001), BTA No. 1999-T-367, unreported; and *Singh v. Franklin Cty. Bd. of Revision* (Sept. 14, 2001), BTA No. 2000-A-1047, unreported, Cleveland Development could only describe the property it owned by the parcel numbers, given the county had not updated its records consistent with the lot split and consolidation

plat. Cleveland Development's failure to seek an adjustment in the name of 1476 limits the complaint to the portions of the subject parcel owned by Cleveland Development. Therefore the BOR should have only proceeded to determine the value of the portions of parcel 102-02-001 (and the included parcels 102-02-002 and 102-02-004) owned by Cleveland Development. See *Park Ridge Co. v. Franklin Cty. Bd. of Revision* (1987), 29 Ohio St.3d 12.

Therefore for the reasons stated above, we find that the BOE has offered sufficient, probative evidence that the decision of the BOR was in error and should be vacated. The Board of Tax Appeals hereby orders that this matter be remanded to the Cuyahoga County Board of Revision for further consideration consistent with the instant decision.

Ms. Jackson dissents.

I respectfully dissent from the majority's opinion and would find that this board has no jurisdiction over the instant appeal. The BOR lacks the requisite jurisdiction over the complaint when the property owner is unable to correctly identify itself.

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