

OHIO BOARD OF TAX APPEALS

Peter Damico,)	
)	
Appellant,)	CASE NO. 2004-T-406
)	
vs.)	(REAL PROPERTY TAX)
)	
Cuyahoga County Board of Revision)	DECISION AND ORDER
and the Cuyahoga County Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant -	Peter Damico, pro se 2300 Bradley Road Westlake, Ohio 44145
For the County Appellees -	William D. Mason Cuyahoga County Prosecuting Attorney Timothy J. Kollin Assistant Prosecuting Attorney Courts Tower, 8th Floor 1200 Ontario Street Cleveland, Ohio 44113

Entered March 11, 2005

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

The Board of Tax Appeals considers this matter pursuant to a notice of appeal filed by Peter Damico. Mr. Damico appeals from a decision of the Cuyahoga County Board of Revision, in which the BOR determined the true value of certain real property to be \$50,000 for tax year 2003. Mr. Damico asserts in his notice of appeal that the correct true value should be \$20,000.

We consider this matter upon the notice of appeal and the transcript certified to this board by the county auditor. Neither Mr. Damico nor the county appellees appeared at the February 4, 2005 merit hearing scheduled before us.¹ In this

¹ See this board's scheduling letter of November 30, 2004.

regard, we remind the parties that our duty is to conduct a de novo review of the record and to “determine the value of the property.” R.C. 5717.03. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, (1996), 76 Ohio St.3d 13.

The subject property is identified in the Cuyahoga County Auditor’s records as permanent parcel number 020-11-009. The record contains no property record card or other description of the subject property. However, the subject is residential in nature and is improved with a house of unknown size and age.

Prior to turning to the merits of this matter, we must first address a jurisdictional issue. The subject notice of appeal was filed with the Board of Tax Appeals on May 18, 2004. The transcript certified to the BTA by the Cuyahoga County Auditor specifies that notice of the BOR’s decision was mailed by certified mail to the complainant on May 10, 2004. See R.C. 5715.20. In addition, the auditor has certified that no copy of the notice of appeal has been filed with the BOR.

R.C. 5717.01 sets forth the requirements for bringing an appeal before the Board of Tax Appeals 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.* If notice of appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender’s receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing.” (Emphasis added.)

The requirements of R.C. 5717.01 must be strictly complied with before the subject matter jurisdiction of the Board of Tax Appeals may be invoked. *Austin Co. v. Cuyahoga Cty. Bd. of Revision* (1989), 46 Ohio St.3d 192; *American Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147. One of those requirements is that the notice of appeal must be filed with both the Board of Tax Appeals and the board of revision within thirty days after the certified mailing of the board of revision's decision. Failing to comply with the requirement will lead to the dismissal of the appeal. *Austin Co.*, supra; *Akron Standard Div. v. Lindley* (1984), 11 Ohio St.3d 10.

Upon review, we must conclude that Mr. Damico failed to file his notice of appeal with the BOR, as required by statute. We therefore lack jurisdiction to consider the issues raised therein.

Even if we were to conclude that the subject matter jurisdiction of this board had been properly raised, we would be constrained by the record before us to find a value identical to the one determined by the BOR. Mr. Damico asserts that the subject property is overvalued because the house is in poor condition. He notes that there is significant water damage to the home, requiring approximately \$20,000 in repairs. He includes in his notice of appeal a photo showing some of the water damage. In addition, Mr. Damico represents that the subject is located near a junk yard, the proximity of which impacts the value of his home.

Both the Supreme Court of Ohio and this board have previously considered the impact of adverse conditions upon the true value of real property. In *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227, 1996-Ohio-226, the court held that “[e]vidence 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 the repairs that is the important factor to be determined by the BTA.” Id. at 228.

In *Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, unreported, we held the existence of a condition does not itself mandate a reduction in value of the real property. “A mere recitation of defects in a taxpayer’s property, without more, is not especially helpful in determining a (lower) valuation. It is also necessary to establish the diminution in value caused by the defects, or some evidence of the value of the property as so diminished.” Id. at 7. It may be true that the property owner cannot avoid the cost of the needed repair; however, cost is not invariably equated with value. *Vogelgesang v. CECOS Internatl., Inc.* (1993), 85 Ohio App.3d 339 at 349, citing *Inmar Assoc., Inc. v. Borough of Carlstadt* (1988), 112 N.J. 593.

Here, Mr. Damico has provided only evidence of the existence of certain conditions. In the absence of other competent and probative evidence of value, we would be compelled to find, had we jurisdiction, that the estimated cost to repair the subject is insufficient to demonstrate what impact, if any, those costs may have upon value. Thus, we would find that Mr. Damico had not presented sufficient competent or probative evidence of value for the subject property. *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336; *Crow v. Cuyahoga Cty. Bd. of Revision* (1990), 50 Ohio St.3d 55.

Based upon our review of the record, we are constrained to find that Mr. Damico’s notice of appeal was not filed with the BOR, as mandated by R.C. 5717.01.

As Mr. Damico failed to properly perfect an appeal to the Board of Tax Appeals, the board orders that BTA No. 2004-T-406 be, and the same hereby is, dismissed.

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