

OHIO BOARD OF TAX APPEALS

The Springfield Bank, NKA,)
Key Bank National Assoc., DBA,)
Key Bank,) Case Nos. 99-J-985
)
Appellant,) (REAL PROPERTY TAX)
)
vs.) DECISION AND ORDER
)
Clark County Auditor, and)
Clark County Board of Revision,)
)
Appellees,)
)
and)
)
Board of Education of the)
Springfield City School District,)
)
Appellee.)

APPEARANCES:

For the Appellant - Karen H. Bauernschmidt
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For the County Appellees - Paul J. Kavanagh
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Springfield, Ohio 45502

For the Board of Education - Robert M. Morrow
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Entered May 26, 2000

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

The Board of Tax Appeals is considering this matter pursuant to a notice of appeal filed herein by The Springfield Bank, now known as Key Bank National Association, doing business as Key Bank. (“Appellant”) Appellant has appealed from a decision of the Clark County Board of Revision that determined the value of the subject real property for tax year 1998. The property is located in the Springfield Local School District and is identified on the auditor’s records as parcel 340-7-36-412-21.

On March 24, 2000 counsel for the county appellees and counsel for the board of education filed a motion to dismiss the appeal. The matter has been submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified herein by the board of revision, and the motion to dismiss.

The motion seeks dismissal on the ground that the appellant failed to appear at the board of revision (“BOR”) hearing, thereby failing to sustain its burden of proof that the auditor had overvalued the property. The matter had originally been scheduled to be heard May 26, 1999 by the BOR. Counsel for the appellant requested that the hearing be continued to June 7, or June 9, 1999. The BOR rescheduled the hearing to June 9, 1999.

The appellant forwarded a packet of material, which the BOR received the morning of the June 9, 1999 hearing. Because the material had not been submitted at least seven days prior to the hearing, the BOR did not consider

the material pursuant to BOR Rule VI, A. The BOR fixed the value at the level determined by the auditor for the reason that the appellant failed to sustain its burden of proving by a preponderance of the evidence the value asserted in the complaint.

R.C. 5715.01 authorizes the board of revision to hear complaints and revise assessments of real property for taxation. R.C. 5715.10 provides that a “county board of revision shall be governed by the laws concerning the valuation of real property and shall make no change of any valuation except in accordance with such laws.” R.C. 5715.11 further provides that a “county board of revision shall hear complaints relating to the valuation or assessment of real property as the same appears upon the tax duplicate of the then current year. The board shall investigate all such complaints and may increase or decrease any such valuation or correct any assessment complained of, or it may order a reassessment by the original assessing officer.”

The Revised Code does not expressly authorize a board of revision to promulgate rules regarding procedure before it. However, in *Friendly's v. Franklin Cty. Bd. of Rev.* (Feb. 18, 1994), B.T.A. No. 92-K-1399, unreported, aff'd. (Sept. 20, 1994), Franklin App. Nos. 94APH03-347, 94APH03-348, and 94APH03-349, unreported, we recognized that boards of revision have an implied authority to adopt reasonable procedural rules by which their hearings are to be conducted. Such implied power is nevertheless ancillary to a board of revision's

express power to hear complaints on the valuation of real property and only extends so far as to effectuate this express power. See, generally, *State, ex rel. A. Bentley & Sons Co. v. Pierce* (1917), 96 Ohio St. 44. In short, procedural rules may not conflict with the duties imposed upon a board of revision by statute:

“While this court has never encouraged or condoned disregard of procedural schemes logically attendant to the pursuit of a substantive legal right, it has also 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.

An attorney representing the appellant appeared at the BOR hearing, and attempted to submit factual data in support of the reduction request. Although the BOR did not dismiss the appeal, the appellant was deprived of the opportunity to submit evidence in support of the value claimed. The BOR refused to consider appellant’s data because it had not been submitted at least seven days prior to the hearing pursuant to BOR Rule VI, A. BOR Rule VI, A, as applied by the BOR, creates a jurisdictional barrier that precluded appellant’s right to a determination of the merits of its complaint. We, therefore, find BOR Rule VI, A to be an unlawful extension of the BOR’s implied power to regulate practice and procedure before it. *Nucorp, Inc. v. Bd. of Revision, supra; Snavely v. Erie Cty. Bd. of Rev.* (1997), 7 Ohio St.3d 500; *Jefferson Savings Assoc. v. Madison Cty. Bd. of Rev.* (Apr. 28, 2000), B.T.A. Nos. 99-T-802, 803, unreported.

We do not seek to excuse the appellant's failure to follow the Board of Revision's Rules of Procedure. As we stated in *Friendly's, supra*:

“The BOR's counsel complains of a perceived disregard for the BOR's role in determining the value of real property. We do not wish to condone or encourage improper conduct on the part of those who appear before county boards of revision. Nor do we condone the filing of complaints that are mere fishing expeditions, the complainants hoping ultimately to find a basis for a reduction in value. However, we will not approve of jurisdictional barriers, not otherwise expressly mandated, which would preclude a determination being made upon complaints claiming an overvaluation. This Board, as well as county boards of revision, must recognize that many complaints are filed by lay persons, who should not be deprived of their right to review based upon a hypertechnical interpretation of the applicable statutes. Provided that there exists substantial compliance with statutory requirements, county boards of revision should proceed to find value of the property at issue.” *Id.* 17.

Therefore, it is decision of the Board of the Board of Tax Appeals that the BOR's decision determining value without considering appellant's evidence is unlawful, and it is hereby reversed. It is ordered that this matter be remanded to the Clark County Board of Revision to afford the parties an opportunity to be heard and further determination of value.