

IN THE SUPREME COURT OF OHIO

07 - 1722

Southside Community Development Corporation

Appellant,

v.

William W. Wilkins,
Tax Commissioner of Ohio

and

Youngstown City School District
Board of Education

Appellees.

Appeal from the Ohio
Board of Tax Appeals

Board of Tax Appeals
Case No. 2006-T-635

NOTICE OF APPEAL OF INTERVENOR MAHONING COUNTY

Carmen V. Codjoe (0077754) (COUNSEL OF RECORD)
Harrington, Hoppe & Mitchell, Ltd.
26 Market Street, Suite 1200
P.O. Box 6077
Youngstown, Ohio 44501-6077
Phone: (330) 744-1111
Fax: (330) 744-2029
E-mail: ccodjoe@hhmlaw.com
COUNSEL FOR INTERVENOR MAHONING COUNTY

Marc Dann (0039425)
Attorney General of Ohio
Janyce C. Katz (0042425) (COUNSEL OF RECORD)
Assistant Attorney General, Taxation Section
State Office Tower, 25th Floor
30 E. Broad Street
Columbus, Ohio 43215-3428
COUNSEL FOR APPELLEE, WILLIAM W. WILKINS,
TAX COMMISSIONER OF OHIO

FILED
SEP 17 2007
CLERK OF COURT
SUPREME COURT OF OHIO

Suhar & Macejko, LLC
Andrew W. Suhar (0058419) (COUNSEL OF RECORD)
1101 Metropolitan Tower
P.O. Box 1497
Youngstown, Ohio 44501-1497
COUNSEL FOR APPELLANT, SOUTHSIDE
COMMUNITY DEVELOPMENT CORPORATION

Paul J. Gains (0020323)
Mahoning County Prosecuting Attorney
Linette M. Stratford (0047223)
Assistant Mahoning County Prosecuting Attorney
21 W. Boardman Street, 6th Floor
Youngstown, Ohio 44503
COUNSEL FOR INTERVENOR MAHONING COUNTY

Martin Hughes & Associates, LPA
Jackie Lynn Hager (0072400) (COUNSEL OF RECORD)
150 E. Wilson Bridge Road, Suite 300
Worthington, Ohio 43085-2326
COUNSEL FOR APPELLEE, YOUNGSTOWN
BOARD OF EDUCATION

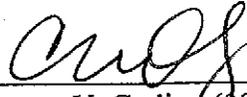
Notice of Appeal of Intervenor Mahoning County

Mahoning County hereby gives notice of its appeal as of right, pursuant to R.C. 5717.04, to the Supreme Court of Ohio, from a Decision and Order of the Board of Tax Appeals, journalized in Case No. 2006-T-635 on August 24, 2007. A true copy of the Decision and Order of the board being appealed is attached hereto and incorporated herein by reference.

Mahoning County complains of the following errors in the Decision and Order of the Board of Tax Appeals:

1. The Ohio Board of Tax Appeals erred in its final appealable order denying Mahoning County's Motion to Intervene in Case No. 2006-T-635, styled as *Southside Community Development Corporation v. William W. Wilkins, Tax Commissioner of Ohio, et al.* finding that Mahoning County is not a real party in interest as taxpayer and property owner of the real property at issue in the above-captioned matter.
2. The Ohio Board of Tax Appeals erred in its determination that Mahoning County could not intervene or join as of right pursuant to R.C. §5717.07 in the above-mentioned case.
3. The Ohio Board of Tax Appeals erred in its final appealable order finding that Mahoning County lacks standing to intervene or join in the above-captioned appeal because Mahoning County did not own the subject property at the time Southside Community Development Corporation, Mahoning County's predecessor in interest, filed an application for exemption from taxation.
4. The Ohio Board of Tax Appeals erred in finding that Mahoning County is "neither statutory nor a necessary party" to the above-captioned appeal.
5. The Decision of the Ohio Board of Tax Appeals denying Mahoning County's Motion to Intervene violates the due process clauses of the Ohio Constitution and the United States Constitution (Ohio Const. Art. I, §1; U.S.Const. Amend. XIV, §1).

Respectfully submitted,



Carmen V. Codjoe (0077754) (COUNSEL
OF RECORD)

Harrington, Hoppe & Mitchell, Ltd.

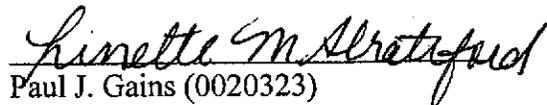
26 Market Street, Suite 1200

P.O. Box 6077

Youngstown, Ohio 44501-6077

COUNSEL FOR INTERVENOR

MAHONING COUNTY



Paul J. Gains (0020323)

Mahoning County Prosecuting Attorney

Linette M. Stratford (0047223)

Assistant Mahoning County Prosecuting
Attorney

21 W. Boardman Street, 6th Floor

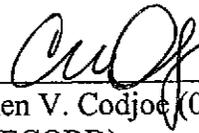
Youngstown, Ohio 44503

COUNSEL FOR INTERVENOR

MAHONING COUNTY

Certificate of Service

I hereby certify that a copy of this Notice of Appeal was sent by certified mail to the **Ohio Board of Tax Appeals**, James A. Rhodes State Office Tower, 24th Floor, 30 East Broad Street, Columbus, Ohio 43215-3414, and counsel for Appellee William W. Wilkins, Tax Commissioner of Ohio, **Marc Dann**, Attorney General of Ohio, and **Janyce C. Katz**, Assistant Attorney General, State Office Tower, 25th Floor, 30 E. Broad Street, Columbus, Ohio 43215-3428; counsel for Appellee Youngstown City School District Board of Education, **Martin Hughes & Associates, LPA, Jackie Lynn Hager**, 150 E. Wilson Bridge Road, Suite 300, Worthington, Ohio 43085-2326; and, counsel for Appellant, Southside Community Development Corporation, **Suhar & Macejko, LLC, Andrew W. Suhar**, 1101 Metropolitan Tower, P.O. Box 1497.



Carmen V. Codjoe (0077754) (COUNSEL
OF RECORD)

Harrington, Hoppe & Mitchell, Ltd.

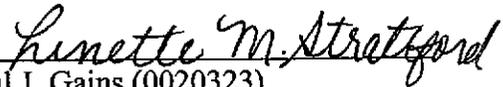
26 Market Street, Suite 1200

P.O. Box 6077

Youngstown, Ohio 44501-6077

COUNSEL FOR INTERVENOR

MAHONING COUNTY



Paul J. Gains (0020323)

Mahoning County Prosecuting Attorney

Linette M. Stratford (0047223)

Assistant Mahoning County Prosecuting
Attorney

21 W. Boardman Street, 6th Floor

Youngstown, Ohio 44503

COUNSEL FOR INTERVENOR

MAHONING COUNTY

RECEIVED
MAHONING COUNTY

OHIO BOARD OF TAX APPEALS

AUG 27 2007

PROSECUTOR
CIVIL DIVISION

Southside Community)
Development Corporation,)

Appellant,)

vs.)

William W. Wilkins, Tax)
Commissioner of Ohio, and)
Youngstown City School District)
Board of Education,)

Appellees.)

CASE NO. 2006-T-635

(REAL PROPERTY TAX EXEMPTION)

ORDER

(Denying Motion to Intervene)

APPEARANCES:

For the Appellant - Suhar & Macejko, LLC
Andrew W. Suhar
1101 Metropolitan Tower
P.O. Box 1497
Youngstown, Ohio 44501-1497

For the Appellee Tax Comm. - Marc Dann
Janyce C. Katz
Assistant Attorney General
Taxation Section
State Office Tower, 25th Floor
30 East Broad Street
Columbus, Ohio 43215-3428

For the Appellee Bd. of Edn. - Martin Hughes & Associates, L.P.A.
Jackie Lynn Hager
150 East Wilson Bridge Road, Suite 300
Worthington, Ohio 43085-2326

For Mahoning County - Paul J. Gains
Mahoning County Prosecuting Attorney
Linette M. Stratford
Assistant Prosecuting Attorney
21 West Boardman Street, 6th Floor
Youngstown, Ohio 44503

Entered AUG 24 2007

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

Mahoning County moves this board for an order permitting it to intervene in this appeal because the county has an interest in the real property in issue. For the reasons given below, the BTA denies the motion to intervene.

The subject appeal concerns eight parcels of real property located in the Youngstown Schools Taxing District of Mahoning County.¹ On December 28, 2004, Southside Community Development Corporation, then owner of the subject property, filed an application for exemption. Southside sought exemption of the subject property from taxation for tax year 2004 and further sought remission of taxes, penalties, and interest for tax years 2001, 2002, and 2003. See R.C. 5715.27(H) and 5713.081. The commissioner issued a final determination on April 7, 2006. Therein, the commissioner denied the application for exemption but did remit all penalties charged for tax years 2001 through 2005. Southside appealed the commissioner's final determination to this board on June 1, 2006.

On May 3, 2006, Southside filed for Chapter 7 bankruptcy protection. Subsequently, on July 27, 2006, Mahoning County purchased the subject property from the bankruptcy trustee. Mahoning County now argues that, as it purchased the property subject to all encumbrances, including real property tax, it has an interest in the outcome of this appeal as the current owner. As such, Mahoning County represents that it is a necessary party to this appeal and seeks to intervene.

The commissioner objects to the motion on the grounds that Mahoning County was not the owner of the subject property at the time the application for

¹ The subject is identified as parcel numbers 53-062-0-225.00-0, 53-062-0-226.00-0, 53-062-0-227.00-0, 53-062-0-228.00-0, 53-062-0-229.00-0, 53-062-0-230.00-0, 53-062-0-231.00-0, and 53-062-0-232.00-0.

exemption was filed in December 2004. The commissioner also objects because Mahoning County did not own the subject during the time for which exemption was sought, i.e., tax year 2004, or for the time for which Southside sought remission of taxes, i.e., 2001, 2002, or 2003. The commissioner further notes that Mahoning County did not acquire title to the subject property until more than three months after the commissioner's April 7, 2006 final determination on the application was issued. In short, the commissioner argues that Mahoning County lacks standing to participate in this appeal.

The commissioner's objection is based upon the Ohio Supreme Court's interpretation of R.C. 5715.27, which governs the filing of an application for exemption. The commissioner asserts that R.C. 5715.27 specifies who has standing to file either an application for exemption or a complaint against exemption. According to the commissioner, because Mahoning County was not an owner of the subject at the time the application was filed, the county lacks standing to participate in these proceedings. R.C. 5715.27(A) specifies:

"Except as provided in section 3735.67 of the Revised Code, the *owner* of any property may file an application with the tax commissioner, on forms prescribed by the commissioner, requesting that such property be exempted from taxation and that taxes and penalties be remitted as provided in division (B) of section 5713.08 of the Revised Code." (Emphasis added.)

"A threshold question when considering an application for exemption filed under R.C. 5715.27 is whether the applicant has standing." *Bd. of Edn. of the Columbus City School Dist. v. Wilkins*, 106 Ohio St.3d 200, 2005-Ohio-4556, at ¶9.

The court has held that the term "owner," as used in R.C. 5715.27, refers only to the legal title owner of the real property for which the exemption is sought. *Performing Arts School of Metro Toledo, Inc. v. Wilkins*, 104 Ohio St.3d 284, 2004-Ohio-6389, at ¶13.

Moreover, the question of who is the owner is dependent upon who owns legal title to the property at the time the application is filed. *Society Natl. Bank v. Tracy* (Jan. 20, 1995), BTA No. 1993-G-549, unreported; *Total Health Care Plan, Inc. v. Zaino* (Dec. 17, 2004), BTA No. 2003-A-57, unreported. In *Total Health Care*, this board considered a situation in which an entity filed an application for exemption although the entity did not own the property at the time of the filing. The entity argued that it had standing to file because it had owned the property during the time period for which exemption was sought. This board disagreed, finding that "a former titleholder does not stand in the same position as the fee simple titleholder, and appellant's contention that THCP was the owner of the subject property during the time period for which exemption is requested has no effect on whether it had standing to file the application after it conveyed title to the subject." *Id.* at 6.

Similarly, Mahoning County was not the legal title holder of the subject property at the time Southside filed the application for exemption. Mahoning County held no interest in the subject at the time of application, throughout the commissioner's review of the application, or at the close of the period during which an appeal from the commissioner's determination could be filed with this board. See R.C. 5717.02. Even if Mahoning County were to demonstrate that it has some contractual

obligation to remit prior taxes due on the subject, such an interest would be insufficient to grant Mahoning County standing to participate in the application process. *Total Health Care*, supra, at 7.

The commissioner argues that, as Mahoning County lacked standing to participate in the application for exemption process, the county is likewise without standing to participate in this appeal. The board agrees. This board has previously denied a motion to intervene where the entity seeking to participate in the appeal as a party has no statutory right to do so. In *Sidman v. Tracy* (Interim Order, Mar. 10, 1995), BTA No. 1994-P-790, unreported, this board acknowledged the Supreme Court's pronouncement in *Avon Lake City School Dist. v. Limbach* (1988), 35 Ohio St.3d 118, at 119, that "[a] litigant has no inherent right to appeal a tax determination, only a statutory right." The board then reviewed R.C. 5717.02,² which authorizes appeals from final orders of the Tax Commissioner, and determined that, because the movant did not fall within that category of persons authorized to appeal the

² R.C. 5717.02 provides: "Except as otherwise provided by law, appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be taken to the board of tax appeals by the taxpayer, by the person to whom notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner is required by law to be given, by the director of budget and management if the revenues affected by such decision would accrue primarily to the state treasury, or by the county auditors of the counties to the undivided general tax funds of which the revenues affected by such decision would primarily accrue. Appeals from the redetermination by the director of development under division (B) of section 5709.64 or division (A) of section 5709.66 of the Revised Code may be taken to the board of tax appeals by the enterprise to which notice of the redetermination is required by law to be given. Appeals from a decision of the tax commissioner concerning an application for a property tax exemption may be taken to the board of tax appeals by a school district that filed a statement concerning such application under division (C) of section 5715.27 of the Revised Code. Appeals from a redetermination by the director of job and family services under section 5733.42 of the Revised Code may be taken by the person to which the notice of the redetermination is required by law to be given under that section."

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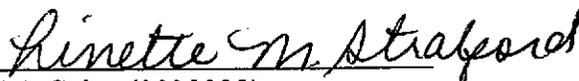
26 Market Street, Suite 1200

P.O. Box 6077

Youngstown, Ohio 44501-6077

COUNSEL FOR INTERVENOR

MAHONING COUNTY



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Mahoning County Prosecuting Attorney

Linette M. Stratford (0047223)

Assistant Mahoning County Prosecuting
Attorney

21 W. Boardman Street, 6th Floor

Youngstown, Ohio 44503

COUNSEL FOR INTERVENOR

MAHONING COUNTY