

IN THE SUPREME COURT OF OHIO

Southside Community Development Corporation	:	
	:	
Appellant,	:	Appeal from the Ohio Board of Tax Appeals
	:	
v.	:	
	:	
William W. Wilkins, Tax Commissioner of Ohio	:	Board of Tax Appeals Case No. 2006-T-635
	:	
and	:	Ohio Supreme Court Case No. 2007-1722
	:	
Youngstown City School District Board of Education	:	
	:	
Appellees.	:	

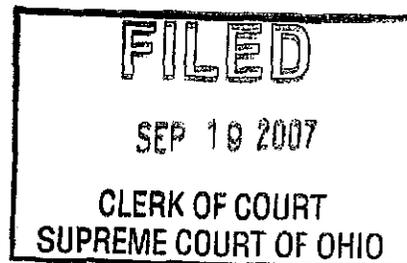
---

MOTION FOR STAY 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](mailto: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, 25<sup>th</sup> Floor  
30 E. Broad Street  
Columbus, Ohio 43215-3428  
COUNSEL FOR APPELLEE, WILLIAM W. WILKINS,  
TAX COMMISSIONER 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, 6<sup>th</sup> 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

### Motion for Stay

Now comes Intervenor Mahoning County and respectfully moves this honorable Court to stay the underlying proceedings of the Board of Tax Appeals Case No. 2006-T-635, *Southside Community Development Corporation v. William W. Wilkins, Tax Commissioner of Ohio, et al.*, pending disposition of the instant Appeal. A copy of the Order of the Ohio Board of Tax Appeals, in Case No. 2006-T-635, is attached hereto and incorporated herein by reference.

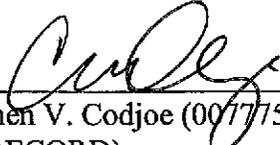
On or about September 17, 2007, Intervenor Mahoning County filed a Notice of Appeal with this Court. Said Appeal is interlocutory in nature as the Ohio Board of Tax Appeals denied Mahoning County's Motion to Intervene in Board of Tax Appeals Case No. 2006-T-635. Mahoning County is the taxpayer and property owner of record of the Real Property at issue in Case No. 2006-T-635. Any further determinations made by the Ohio Board of Tax Appeals (the "Board") concerning Case No. 2006-T-635 will irreparably impair Intervenor Mahoning County's rights therein as its interests are not adequately represented. Furthermore, any continuation by the Board in the proceedings below is inconsistent with this Court's jurisdiction to review the Board's decision to deny the Motion to Intervene pursuant to R.C. §5717.04 and S. Ct. Prac. R. II(B). *See Lorain Educ. Assn. v. Lorain City School Dist. Bd. of Edn.* (1989), 46 Ohio St.3d 12, 15.

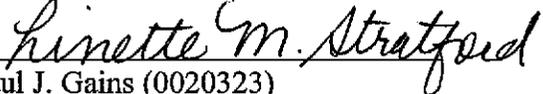
Therefore, Intervenor Mahoning County respectfully requests this Court to find that the Ohio Board of Tax Appeals is divested of jurisdiction with respect to Case No. 2006-T-635, pending this Court's decision herein, and accordingly stay the proceedings below.

Pursuant to R.C. 2505.12, Mahoning County is not required to give bond in connection with the instant appeal. See R.C. 2505.12(A)(2),(B). Mahoning County is a political subdivision

of the State of Ohio. R.C. 2505.12(A)(2). Furthermore, the Order from which Mahoning County appeals is not for the payment of money. R.C. 2505.12(B).

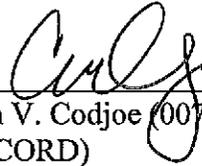
Respectfully submitted,

  
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, 6<sup>th</sup> Floor  
Youngstown, Ohio 44503  
COUNSEL FOR INTERVENOR  
MAHONING COUNTY

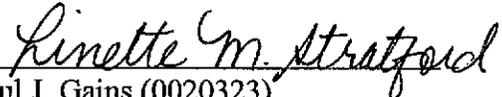
Certificate of Service

I hereby certify that a copy of this Motion for Stay was sent by certified mail to the **Ohio Board of Tax Appeals**, James A. Rhodes State Office Tower, 24<sup>th</sup> 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, 25<sup>th</sup> 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, Youngstown, OH 44501.



\_\_\_\_\_  
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, 6<sup>th</sup> Floor  
Youngstown, Ohio 44503  
COUNSEL FOR INTERVENOR  
MAHONING COUNTY

RECEIVED  
MAHONING COUNTY

AUG 27 2007

**OHIO BOARD OF TAX APPEALS**

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, 6<sup>th</sup> 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.<sup>1</sup> 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

---

<sup>1</sup> 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,<sup>2</sup> 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

---

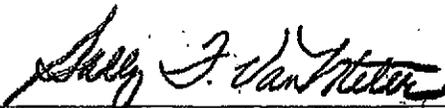
<sup>2</sup> R.C. 5717.02 provides: "Except as otherwise provided by law, appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be taken 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."

commissioner's final order, it was precluded from participating in the appeal as an intervenor.

As Mahoning County lacked standing to file the application for exemption now on appeal and did not have an interest in the subject either at the time the commissioner issued the final determination or at the time the determination could be appealed to this board, the BTA concludes that Mahoning County is neither a statutory nor necessary party. Mahoning County's motion to intervene is therefore denied.

Nevertheless, the BTA is always receptive to the citation of additional authority that may be germane to the issues raised in an appeal. For this reason, following the conclusion of the evidentiary hearing in this matter, Mahoning County will be accorded the opportunity to file an amicus curiae brief at the same time as the party whose position it seeks to support. See *Bd. of Edn., Princeton City School Dist. v. Tracy* (Interim Order, May 15, 1998), BTA No. 1997-K-825, unreported. However, it will remain the responsibility of Mahoning County to ascertain the date when such a filing is due.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.

  
Sally F. Van Meter, Board Secretary