

IN THE SUPREME COURT OF OHIO

Gasper Township Board of Trustees, : Case No. 07-1282
: :
Appellant, : Appeal from the
: Ohio Board of Tax Appeals
: Case No. 2004-T-1152
v. : :
: :
Preble County Budget Commission, et al., :
: :
Appellees. : :

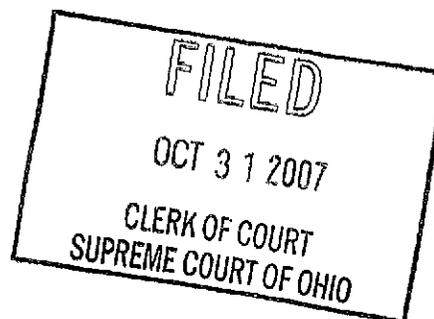
**MOTION OF APPELLEES VILLAGES OF ELDORADO, GRATIS, LEWISBURG,
NEW PARIS, WEST ALEXANDRIA, WEST MANCHESTER AND VERONA
TO SUPPLEMENT THE RECORD ON APPEAL**

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	:	Case No. 2004-T-1152
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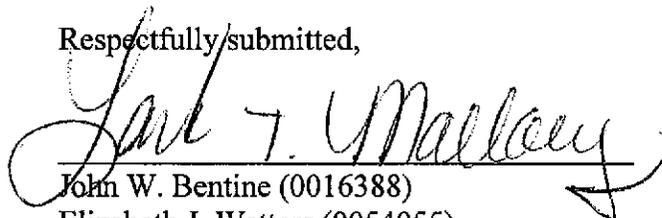
Appellees Villages of Eldorado, Gratis, Lewisburg, New Paris, West Alexandria, West Manchester and Verona (“Appellees Villages”) move, pursuant to Ohio S.Ct.Prac.R. V, § 6 and the Court’s equity powers, to supplement the record to add certified copies of the initial docketing notices issued by the Ohio Board of Tax Appeals in *Gasper Twp. Bd. of Trustees v. Preble Cty. Budget Comm.*, Case No. 2004-T-1152, the case from which this appeal is taken. The initial docketing notices, certified copies of which are attached hereto as Exhibit A, are contained in the Ohio Board of Tax Appeals’ files for Case No. 2004-T-1152, were formally issued by the Ohio Board of Tax Appeals in Case No. 2004-T-1152, but were inadvertently excluded from the record transmitted to the Supreme Court.

Additionally, the certified initial docketing notices issued by the Ohio Board of Tax Appeals are necessary for the Supreme Court’s consideration of the lack of jurisdiction question present on appeal because they establish that the Ohio Board of Tax Appeals did not have proper jurisdiction over Case No. 2004-T-1152 and Appellant was on written notice that the Ohio Board of Tax Appeals was proceeding with the notice of appeal filed on October 6, 2004, not the

second notice dated October 15th and filed on October 18, 2004. As a result, it was the October 6, 2004 notice of appeal, not the October 15, 2004 notice of appeal, that had to be filed with the Preble County Budget Commission in order for the case to be deemed filed under R.C. 5705.37 and for jurisdiction to vest with the Ohio Board of Tax Appeals. Appellant ignored the initial docketing notice it received and unsuccessfully attempted to file its October 15, 2004 notice of appeal with the Budget Commission in violation of R.C. 5705.37. As a result, Appellees Villages should be allowed to rely upon the official notices issued by the Ohio Board of Tax Appeals to the parties in Case No. 2004-T-1152 at the beginning of the case, which were clearly part of the proceedings before the Ohio Board of Tax Appeals and were inadvertently excluded from the record, in support of their lack of jurisdiction argument.

The reasons in support of this motion are fully set forth in the attached memorandum in support.

Respectfully submitted,



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Lewisburg, New Paris, West Alexandria, West
Manchester and Verona

MEMORANDUM IN SUPPORT

S.Ct.Prac.R. V, § 6 provides that in appeals to this Court, “[i]f any part of the record is not transmitted to the Supreme Court but is necessary to the Supreme Court's consideration of the questions presented on appeal, the Supreme Court, on its own initiative or upon stipulation of the parties or motion of a party, may direct that a supplemental record be certified and transmitted to the Clerk of the Supreme Court.” In addition, as the Court is aware, the lack of subject matter jurisdiction may be raised at any time in the proceedings, including for the first time on appeal. *See Breidenback v. Mayfield* (1988), 37 Ohio St.3d 138, 139; *Fox v. Eaton Corp.* (1976), 48 Ohio St.3d 236, 238, 358 N.E.2d 536, overruled on other grounds by *Manning v. Ohio State Library Bd.* (1991), 62 Ohio St.3d 24, 577 N.E.2d 650, syllabus para. 1; Civ.R. 12(H)(3) (“Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.”); *Jenkins v. Keller* (1966), 6 Ohio St.2d 122, syllabus para. 5.

As the Tenth District Court of Appeals noted in *In re Kerry Ford, Inc.* (1995), 106 Ohio App.3d 643, 651, 66 N.E.2d 1157:

It is well settled that lack of subject-matter jurisdiction may be raised at any stage of the proceedings. Parties may not, by stipulation or agreement, confer subject-matter jurisdiction on a court or administrative body where such jurisdiction does not otherwise exist. Further, ‘[i]t is a fundamental proposition that just as parties cannot confer subject matter jurisdiction by consent, subject matter jurisdiction cannot be acquired based upon a theory of estoppel or waiver arising from the acts of the parties or their agents.’ (Citations omitted) (emphasis added).

Here, the certified copies of initial docketing notices issued by the Ohio Board of Tax Appeals (“BTA”) to Appellant and Appellee Preble County Budget Commission (“Budget Commission”) on October 26 & 27, 2004 in *Gasper Twp. Bd. of Trustees v. Preble Cty. Budget*

Comm., BTA No. 2004-T-1152, are part of the applicable record. *See* S.Ct.Prac.R. V, § 1 (“[i]n all appeals, the record on appeal shall consist of the original papers . . . and certified copies of journal entries . . . and the docket . . .”). *Certified copies of the October 26, 2004 and October 27, 2004 Initial Docketing Notices are attached hereto collectively as Exhibit A.* The initial docketing notices were issued more than two years before the Ohio Board of Tax Appeals’ (“BTA”) June 14, 2007 decision and order that dismissed Appellant’s appeal for lack of jurisdiction, and were clearly a part of the proceedings before the BTA in Case No. 2004-T-1152. The certification from the BTA also reflects the fact that the initial docketing notices were formally issued by the BTA in Case No. 2004-T-1152 several weeks after the notice of appeal was filed and the case was docketed. *Id.*

The initial docketing notices are also a part of the BTA’s official, original records and papers for Case No. 2004-T-1152, as evidenced by the certification from the BTA that accompanies the attached copies of the initial docketing notices. *See Exhibit A.* While twelve other notices and/or letters issued by BTA or received by the BTA in Case No. 2004-T-1152, which are similar in substance and form, are included in the record submitted to this Court – including a notice issued by the BTA several weeks earlier on October 8, 2004 acknowledging receipt of correspondence from Appellant and advising Appellant that the correspondence would be treated by the BTA as a notice of appeal – it appears as if the initial docketing notices were not transmitted as part of the record on appeal.

Additionally, the initial docketing notices are necessary to the Court’s review of the merits of the appeal – the issue of whether or not the BTA had subject matter jurisdiction over Appellant’s appeal. While Appellees Villages moved to dismiss Appellant’s appeal to the BTA on other grounds in Case No. 2004-T-1152, they are not estopped from raising with this Court

for the first time the effect and impact of Gasper's October 6, 2004 notice of appeal and its failure to comply with the jurisdictional filing and notice provisions of R.C. 5705.37 with regard to the notice that triggered its appeal. Similarly, they are not estopped or precluded from relying upon original papers, journal entries and docketing notices in Case No. 2004-T-1152 that support their new lack of jurisdiction argument, even if the BTA did not consider these papers in rendering its June 15, 2007 Decision and Order.

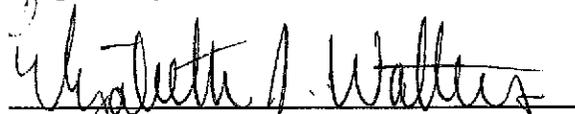
The initial docketing notices formally issued by the BTA establish that the BTA did not have proper jurisdiction over Case No. 2004-T-1152, and Appellant was on written notice that the BTA was proceeding with the notice of appeal filed on October 6, 2004, not the second notice dated October 15th and filed on October 18, 2004. As a result, it was the October 6, 2004 notice of appeal, not the October 15, 2004 notice of appeal, that had to be filed with the Budget Commission in order for the case to be deemed filed under R.C. 5705.37 and for jurisdiction to vest with the BTA. Appellant ignored the initial docketing notice it received and unsuccessfully attempted to file its October 15, 2004 notice of appeal with the Budget Commission.

The interests of justice as well as this Court's well-known rulings allowing parties to raise jurisdictional arguments at any time in the proceedings require allowing Appellees Villages to supplement the record in this case. Appellees Villages are not attempting to add new evidence, but to correct an omission in the record transmitted to the Court by the BTA – namely, to correct the record and to make it clear that Appellant knew its notice of appeal was filed on October 6, 2004 and that it had to comply with the jurisdictional filing requirements of R.C. 5705.37 with regard to the October 6, 2004 notice, not the October 15, 2004 notice. Allowing Appellees Villages to supplement the record will expedite this appeal and will make clear that there is no need for the Court to even address the issue of whether or not the BTA was correct in

ruling that Appellant failed to comply with R.C. 5705.37 with regard to its unsuccessful attempt to file its October 15, 2004 notice of appeal with the Budget Commission.

As a result, Appellees Villages should be allowed to rely upon the official notices issued by the BTA to the parties in Case No. 2004-T-1152 at the beginning of the case, which were clearly part of the proceedings before the BTA and were inadvertently excluded from the record, in support of their lack of jurisdiction argument.

Respectfully submitted,



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Counsel for Appellees Villages of Eldorado, Gratis,
Lewisburg, New Paris, West Alexandria, West
Manchester and Verona

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion to Supplement the Record on Appeal was served by regular U.S. mail, postage prepaid, on this 31st day of October, 2007 to the Attorney for Appellant at the following address:

Attorney for Appellant
John R. Varanese, Esq.
85 East Gay Street, Suite 1000
Columbus, Ohio 43215

and by regular U.S. mail, postage prepaid, to the parties noted below this 31st day of October, 2007:

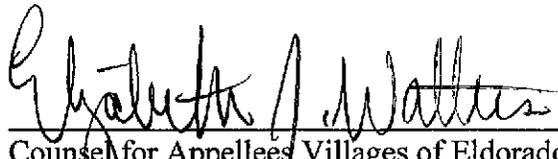
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c/o Rebecca Wilson, Clerk
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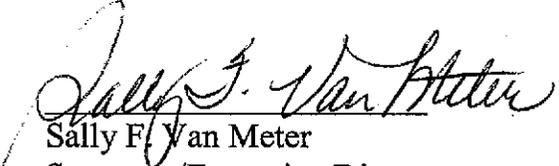
Counsel for Appellees Villages of Eldorado, Gratis,
Lewisburg, New Paris, West Alexandria, West
Manchester and Verona

OHIO BOARD OF TAX APPEALS

CERTIFICATION

I, Sally F. Van Meter, do hereby certify that I am the duly appointed Secretary/Executive Director of the Ohio Board of Tax Appeals and as such have custody of all of the board's official records. I further certify that attached are true and accurate copies of the initial docketing notices issued by this board in *Gaspar Twp. Bd. of Trustees v. Preble Cty. Budget Comm.*, BTA No. 2004-T-1152.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Ohio Board of Tax Appeals this 30th day of October 2007.


Sally F. Van Meter
Secretary/Executive Director
Ohio Board of Tax Appeals

STATE OF OHIO



10/26/2004

BOB TAFT
GOVERNOR

LAUVON MANTLE
TOWNSHIP CLERK
4212 EDISON ROAD
CAMDEN, OH 45311

In Re: GASPER TOWNSHIP BOARD OF TRUSTEES VS.
PREBLE COUNTY BUDGET COMMISSION, ET

AL

Case No. 2004-T-1152

Dear LAUVON MANTLE :

A notice of appeal was filed with the Board of Tax Appeals on 10/06/2004. The matter has been docketed as Case No. 2004-1152 and assigned to STEVEN L. SMISECK, Hearing Examiner for the Board.

The appeal will be scheduled either for a hearing on the merits, or for a mediation conference. You will receive a notification from this office of the type of proceeding, and the date. If you believe this appeal would be amenable to settlement by mediation, you may request a mediation conference by filing your written request within 90 days of receiving this notice.

In all future correspondence with the Board regarding this matter, please utilize the case number assigned above.

Very truly yours,

Deborah J. Patterson
Administrator

DJPSUPTDAP
cc:PROSECUTING ATTORNEY
AUDITOR
TREASURER
PREBLE COUNTY BUDGET
REBECCA J. FERGUSON
VILLAGE OF CAMDEN
VILLAGE OF COLLEGE CORNER

~~BTA001/BTADOC~~

30 East Broad Street • Columbus, Ohio 43215-3414

Telephone: 614 466 5700 Fax: 614 444 5106 Internet Address: www.state.oh.us/bta/



10/27/2004

BOB TAFT
GOVERNOR

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AUDITOR
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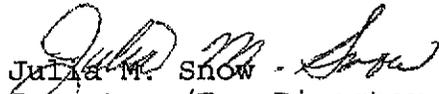
In Re: GASPER TOWNSHIP BOARD OF TRUSTEES VS.
PREBLE COUNTY BUDGET COMMISSION, ET AL

Case No. 2004-T-1152

Dear HAROLD E. YODER:

On 10/06/2004, a notice of appeal was filed with the Board of Tax Appeals in the above styled appeal. As Secretary of the County Budget Commission, the County Auditor is required to certify to this Board a transcript upon the filing of the notice of appeal. Such transcript should include the full and accurate record of the proceedings pertaining to the action of the Budget Commission from which the appeal is taken. See R. C. 5705.37 effective March 17, 1989. Your prompt compliance with this statutory duty would be greatly appreciated.

Very truly yours,


Julia M. Snow
Secretary/Ex. Director

JMS/SUPTDAP