

IN THE SUPREME COURT OF OHIO

Southside Community Development Corporation : Case No. 2007-1722
Appellant, :
v. : On Appeal from the
William W. Wilkins, : Ohio Board of Tax Appeals
Tax Commissioner of Ohio : Case No. 2006-T-635
and : (DTE Case No. KE4096)
Youngstown City School District :
Board of Education :
Appellees. :

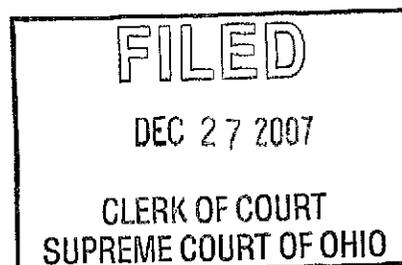
REPLY BRIEF OF APPELLANT MAHONING COUNTY

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 APPELLANT-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



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

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iii
INTRODUCTION	1
LAW AND ARGUMENT	1
CONCLUSION	2
PROOF OF SERVICE	4

TABLE OF AUTHORITIES

<u>CASES:</u>	<u>Page</u>
<i>Southern Ohio Savings Bank & Trust Co. v. Bolce</i> , 165 Ohio St. 201	2
 <u>STATUTES:</u>	
R.C. Chapter 5715.27	1
R.C. 5717.02	2

INTRODUCTION

In his Brief, the Tax Commissioner argues as follows: (1) The BTA's denial of Mahoning County's Motion to Intervene was reasonable and lawful; (2) Under 5715.27(A) only a property owner can file for an exemption for real property; (3) Mahoning County lacked standing to file an appeal to the BTA since it did not own the Property at the time for filing an appeal and it did not qualify as an entity authorized to so file; and (4) this Appeal should be dismissed as it was taken from an "interim order." (Brief of Commissioner, pp. 5-12.)

In response, Appellant asserts that the BTA's decision to deny Appellant's Motion to Intervene lacked basis in both law and reasonableness. The case at bar does not concern Mahoning County's standing to file an application for exemption or to institute an appeal to the BTA prior to its owning the Property. Instead, the issue here stems from a unique set of facts, which involves the right of a subsequent property owner to *intervene* in an appeal set in motion by its predecessor in interest and which entails a determination affecting its substantial rights. Furthermore, as this Court has found that this case implicates Mahoning County's substantial rights, it is properly before this Court and no further response concerning the same is required of Mahoning County.

LAW AND ARGUMENT

Despite Appellee's insistence on forcing the circumstances here to fit within the parameters of a line of cases that are factually inapposite, Mahoning County has a right to intervene the appeal before the BTA concerning the Property as the current owner, taxpayer, and sole party responsible for any liens upon the Property. Appellee boldly asserts that the BTA's decision that Mahoning County lacked standing was "reasonable and lawful" without as much as a single cite to any supporting authority. (Brief of Tax Commissioner, p. 5.) However, even

under the relaxed standard enjoyed by the BTA, there is ample authority supporting a finding to the contrary.

Mahoning County is a real party at interest that shall be significantly impacted by any order of the BTA below. Though Appellee argues that an exemption does not “run with the land,” responsibility for real property tax certainly does. *Southern Ohio Savings Bank & Trust Co. v. Bolce* (1956), 165 Ohio St. 201, 209, 135 N.E.2d 382. As the Tax Commissioner well knows, tax liens attach to realty, not entities. *Id.* Thus, Mahoning County’s liability for all liens encumbering the Property makes it a real party in interest in the appeal before the BTA. The BTA’s denial of Mahoning County’s Motion to Intervene, which necessarily disallows Mahoning County to protect its interests, cannot be reasonable or lawful.

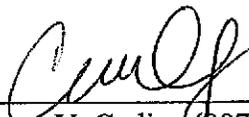
Furthermore, Mahoning County is a statutory party as provided by Revised Code Section 5717.02. R.C. 5717.02. Section 5717.02 makes the taxpayer a statutory party to tax appeals before the BTA. *Id.* It is undisputed that SCDC timely filed an appeal with the BTA while it was the owner and taxpayer for the Property. (Supp. 12.) As a result of the real estate transfer, Mahoning County later became both taxpayer and land owner for the same Property. Thus, SCDC perfected the appeal in which, after proper institution, Mahoning County could rightfully intervene upon becoming vested in the Property.

CONCLUSION

Therefore, because Mahoning County has a legal, and not solely equitable, interest in the Property subject to the determination of the BTA in the appeal below, it has the right to intervene in said appeal. Thus, the BTA’s order denying the intervention Mahoning County, the present property owner and taxpayer, is not reasonable or lawful.

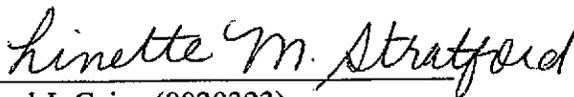
For these reasons, and the reasons stated in Appellant's Brief, Appellant respectfully requests that this Court find in its favor.

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

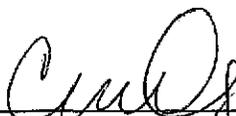


Paul J. Gains (0020323)
Mahoning County Prosecuting Attorney
Linette M. Stratford (0047223)
Assistant Mahoning County Prosecuting Attorney
21 W. Boardman Street, 6th Floor
Youngstown, Ohio 44503

COUNSEL FOR INTERVENOR MAHONING COUNTY

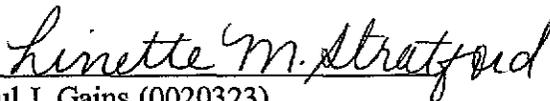
PROOF OF SERVICE

I hereby certify that a true and accurate copy of this Merit Brief of Appellant Mahoning County was served via ordinary mail to 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, Youngstown, OH 44501, this 26th day of December, 2007.



Carmen V. Codjoe (0077754) (COUNSEL OF RECORD)
Harrington, Hoppe & Mitchell, Ltd.
26 Market Street, Suite 1200
P.O. Box 6077
Youngstown, Ohio 44501-6077

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Assistant Mahoning County Prosecuting Attorney
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Youngstown, Ohio 44503

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