

IN THE SUPREME COURT

STATE OF OHIO

APPEAL FROM THE BOARD OF TAX APPEALS

POLARIS AMPHITHEATER CONCERTS, INC.,)	SUPREME COURT CASE
)	NUMBER 07-0347
)	
Appellant,)	
)	BOARD OF TAX APPEALS
vs.)	CASE NUMBER 2004-V-1294
)	
DELAWARE COUNTY BOARD OF)	
REVISION, DELAWARE COUNTY)	
AUDITOR, BOARD OF EDUCATION OF THE)	
OLENTANGY LOCAL SCHOOLS, AND TAX)	
COMMISSIONER OF THE STATE OF OHIO,)	
)	
Appellees.)	
)	

**APPELLANT'S MEMORANDUM IN OPPOSITION TO THE MOTION OF APPELLEE
BOARD OF EDUCATION OF THE OLENTANGY LOCAL SCHOOL DISTRICT FOR
RECONSIDERATION OF THIS COURT'S DECISION**

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OLENTANGY LOCAL SCHOOL
DISTRICT

The Appellee Board of Education of the Olentangy Local School District (hereinafter Appellee) has filed a motion with the Court urging it to reconsider its decision in this appeal. This memorandum in opposition to that motion addresses the issues and arguments raised by the Appellee in its motion. The Appellant submits that there is no error in the Court's decision and the Appellee's motion should be denied.

The Appellee's argument that it was "at no time ... aggrieved, prejudiced or injured by the decision of the BTA" is not correct. This argument was raised by the Appellee at oral argument before the Court. A review of the Record in this appeal reveals that the Appellee did have a right of appeal (that it did not exercise) with respect to the value of the improvements (building value). The only approach to value utilized by the Appellee's appraiser was the cost approach. Supplement to the Brief (hereinafter Supp.) at page 237. His value for the building (identified as depreciated building value) was \$12,371,921. The Board of Tax Appeals decision and order valued the buildings on the parcels at a total value of \$6,935,600. Board of Tax Appeals decision and order at pages 18 and 19. As the Court recognized in its decision, the Appellee had a right to appeal this determination to the Court and the Appellee did not exercise that right; the Appellee's failure to do so does not provide a basis for the Court to reconsider its decision in this appeal.

At page 5 in its motion the Appellee raises the "total valuation" issue that it previously raised in its merit brief at pages 7 through 10. The Appellee does not raise any new issues in its motion that would justify a reconsideration by the Court of its decision in this appeal. Further, the Appellee offers no support for its request at page 5 that the Board of Tax Appeals have broader jurisdiction on remand than this Court has in this appeal. The facts and holdings in

Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision, 113 Ohio St. 3d 281, 2007-Ohio-1948, and Dublin-Sawmill Properties v. Franklin Cty. Bd. of Revision (1993), 67 Ohio St. 3d 575 do not support the Appellee's request and their motion for reconsideration should be denied.

CONCLUSION

For the foregoing reasons, the Appellant Polaris Amphitheater Concerts, Inc. respectfully requests that this Court deny the Motion of Appellee Board of Education of the Olentangy Local School District for Reconsideration of this Court's decision in this appeal.

Respectfully submitted,

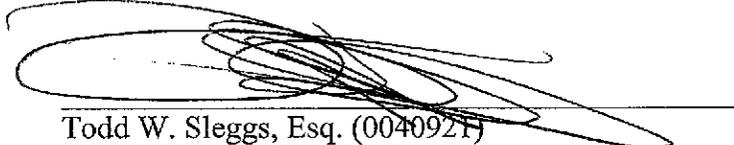


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CERTIFICATE OF SERVICE

A copy of the foregoing Appellant's Memorandum in Opposition to Motion of Appellee Board of Education of the Olentangy Local School District for Reconsideration of this Court's Decision was mailed via regular U.S. mail postage prepaid, the 3rd day of June, 2008 to the following: Jeffrey A. Rich, Rich, Crites & Dittmer, LLC, 300 East Broad Street, Suite 300, Columbus, Ohio 43215-3452, Attorney for the Appellee Board of Education of the Olentangy Local School District; and Christopher D. Betts, Assistant Delaware County Prosecutor, 140 North Sandusky Street, 3rd Floor, Delaware, Ohio 43015, Attorney for the Appellees Delaware County Board of Revision and Delaware County Auditor, and the Ohio Attorney General, State Office Tower, 17th Floor, 30 East Broad Street, Columbus, Ohio 43215-3428, Attorney for the Appellee Tax Commissioner of the State of Ohio.


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