

ORIGINAL

IN THE SUPREME COURT OF OHIO

09-1900

MB WESTCHESTER, LLC :

CASE NO. _____

Appellee, :

vs. :

ON APPEAL FROM THE OHIO
BOARD OF TAX APPEALS

BUTLER COUNTY BOARD OF
REVISION, BUTLER COUNTY
AUDITOR & TAX COMMISSIONER
OF OHIO :

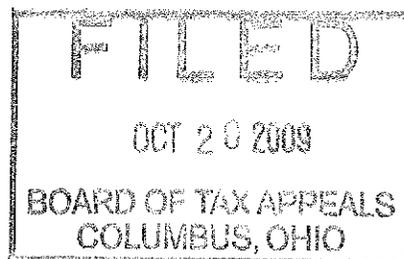
BTA CASE NO. 2009-M-238

Appellees, :

vs. :

BOARD OF EDUCATION OF THE
LAKOTA LOCAL SCHOOL DISTRICT :

Appellant. :



NOTICE OF APPEAL OF APPELLANT
LAKOTA LOCAL SCHOOL DISTRICT BOARD OF EDUCATION

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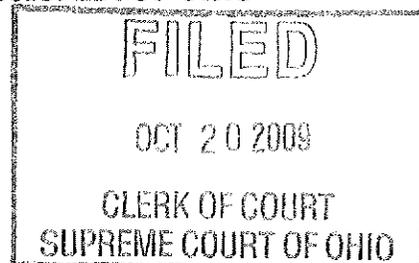
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& Butler County Auditor

TAX COMMISSIONER OF OHIO



**NOTICE OF APPEAL OF APPELLANT,
THE LAKOTA LOCAL SCHOOL DISTRICT BOARD OF EDUCATION**

Appellant, the Board of Education of the Lakota Local School District (the “Board of Education”), by and through counsel, hereby gives notice of its right, pursuant to Ohio Revised Code Section 5717.04, to the Supreme Court of Ohio, from an Order of the Board of Tax Appeals, journalized in Case No. 2009-M-238 on September 22, 2009. A true copy of the Order of the Board of Tax Appeals being appealed is attached hereto and incorporated herein as Exhibit A.

Appellant complains of the following errors in the Order of the Board of Tax Appeals:

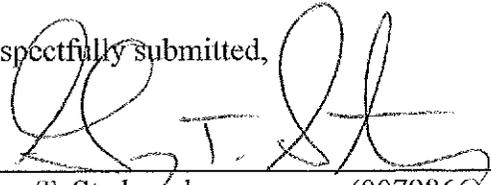
1. The Board of Tax Appeals erred and abused its discretion when it concluded that it was without jurisdiction to consider the Board of Education’s motion to intervene and vacate a stipulation when:

A. The Board of Tax Appeals accepted an invalid stipulation of value without all statutory prerequisites having been met that would permit the Board of Tax Appeals to accept such a stipulation and conclude its jurisdiction over a pending appeal.

B. The Board of Tax Appeals accepted an invalid stipulation of value without the Board of Education, the original complainant at the Board of Revision, having been notified of the pending appeal in accordance with the statutory requirements of Ohio Revised Code Section 5717.01 or named as a party to the appeal in accordance with Ohio Administrative Code Section 5717-1-04.

C. The Board of Tax Appeals accepted an invalid stipulation of value in which the Board of Education, an interested and required party, did not agree upon the terms and conditions of the stipulation.

Respectfully submitted,



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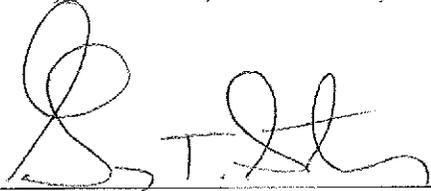
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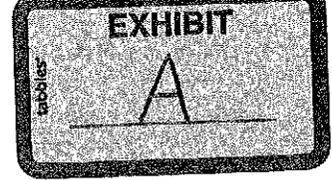
*Attorney for the Board of Education of the
Lakota Local School District*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via certified mail upon **J. Donald Mottley**, Attorney for Appellee, MB West Chester, LLC, 21 East State Street, Suite 1200, Columbus, OH 43215 and **Robert C. Roberts**, Assistant Prosecuting Attorney, Attorney for Appellees, the Butler County Board of Revision and Butler County Auditor, Government Services Center, 11th Floor, 315 High Street, P.O. Box 515, Hamilton, Ohio 45011 and **Richard Levin**, Tax Commissioner of Ohio, 30 East Broad Street, Columbus, Ohio 43215, this 20th day of October, 2009.



Gary T. Stedronsky



OHIO BOARD OF TAX APPEALS

MB Westchester, L.L.C.,)	CASE NO. 2009-M-238
)	
Appellant,)	(REAL PROPERTY TAX)
)	
vs.)	ORDER
)	
Butler County Board of Revision and)	(Denying Motions to Intervene and
the Butler County Auditor,)	Vacate Stipulation)
)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	Taft Stettinius & Hollister LLP J. Donald Mottley 21 East State Street, Suite 1200 Columbus, Ohio 43215
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For the County Appellees -	Robin N. Piper Butler County Prosecuting Attorney Bob C. Roberts Assistant Prosecuting Attorney P.O. Box 515 Hamilton, Ohio 45012
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For the Bd. of Edn of the Lakota Local School District	Ennis, Roberts & Fischer Gary T. Stedronsky 1714 West Galbraith Road Cincinnati, Ohio 45239
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Entered SEP 22 2009

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

This matter is before the Board of Tax Appeals pursuant to a "motion to intervene and vacate order accepting stipulation of value" filed by counsel for the Board of Education of the Lakota Local School District ("BOE"). The BOE avers that it originally filed the complaint which was the genesis of the ultimate stipulation of value approved by this board. Despite having filed the original complaint, the BOE avers that it did not receive notice of the filing of a notice of appeal from the Butler

County Board of Revision (“BOR”), nor was it named as a party in the notice of appeal filed by appellant, MB West Chester, L.L.C. (“MB”).

We are without jurisdiction to consider this motion as it was not timely filed with this board. The board’s order stipulating the subject appeal was certified on June 23, 2009. The subject motion was filed September 1, 2009, more than thirty days after certification. The Ohio Supreme Court has held that an administrative agency has the authority to reconsider its decision until a timely appeal is taken or the time period for instituting such appeal has passed. *State ex rel. Borsuk v. Cleveland* (1972), 28 Ohio St.2d 224, paragraph one of the syllabus. See, also, *Hal Artz Lincoln-Mercury, Inc. v. Ford Motor Co.* (1986), 28 Ohio St.3d 20. This holding was specifically applied to the Board of Tax Appeals in *Lutz v. Evatt* (1945), 144 Ohio St. 635, wherein the court held that once the thirty-day period for filing a notice of appeal had expired, the Board of Tax Appeals was without authority to vacate an earlier decision and to refile another decision so that an appeal might be filed. See, also, *Cincinnati School Dist. Bd. of Edn. v. Bd. of Revision of Hamilton Cty.* (2000), 87 Ohio St.3d 363, where the holding was applied to boards of revision.

The board notes that pursuant to R.C. 5717.01, it is the obligation of the board of revision to provide notice of an appeal to this board to those persons/entities “who were parties to the proceeding before such county board of revision.” Apparently the BOE was not notified. However, the failing by the BOR does not expand this board’s ability to act outside its jurisdictional authority. See *Cincinnati School Dist. Bd. of Edn.*, *supra*.

The board denies the BOE's motion to intervene and vacate the stipulation.

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.

A handwritten signature in cursive script, reading "Sally F. Van Meter".

Sally F. Van Meter, Board Secretary