

ORIGINAL

IN THE
SUPREME COURT OF OHIO

BOARD OF EDUCATION OF THE
LAKOTA LOCAL SCHOOL DISTRICT,

Appellant,

v.

BUTLER COUNTY
BOARD OF REVISION, *et al.*,

Appellees.

CASE NO. 2009-1900

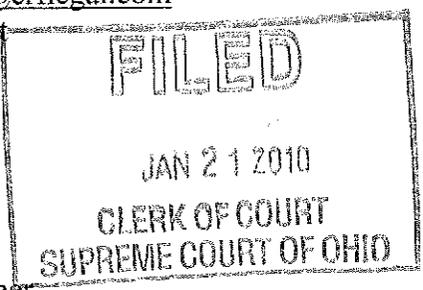
On Appeal from the
Ohio Board of Tax Appeals

BTA Case No. 2009-M-238

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STATEMENT OF THE CASE

In response to a valuation complaint filed by the Board of Education of the Lakota Local School District (hereinafter "the BOE"), the Butler County Board of Revision increased the valuation of three adjoining parcels of real estate owned by MB Westchester, LLC (hereinafter "Westchester") in Butler County. *See* Supp. at 1-5. Westchester timely appealed that determination to the Board of Tax Appeals (hereinafter "the BTA"). *See* Supp. at 6-8. The basis for Westchester's appeal was not that the total valuation for all three parcels determined by the Board of Revision was incorrect, but rather that it assigned too much of that total valuation to the parcel liable for payments in lieu of taxes under a local tax increment financing arrangement and too little to the parcel fully exempt from taxation under an Enterprise Zone Agreement [Supp. at 6-7]. Westchester did not dispute the portion of the Board of Revisions' valuation of that parcel which is fully taxable [Supp. at 5-7].

Westchester and the Board of Revision, the appellant and the appellee before the BTA, filed a stipulation with the BTA setting forth their agreed upon valuation of the subject property and their allocation of that valuation among the fully taxable and fully exempt parcels and that parcel subject to payment in lieu of taxes [Second Supp. at 1]. The stipulated value of the fully-taxable parcel (whose value was not in dispute) was \$884,580 -- -- the same as that established by the Board of Revision [Supp. at 5, 13]. The stipulated value of the parcel that was subject to payments in lieu of taxes was reduced to \$15,268,630 -- -- the value requested in Westchester's Notice of Appeal to the BTA [Supp. at 3, 7, 13]. And, the stipulated value of the parcel which is fully exempt from taxation was also left at the value established by the Board of Revision.¹ *See* Supp. at 4, 6, 13. The BTA entered an order on June 23, 2009 approving the Stipulation of

¹ Increasing the value of the exempt parcel would not have benefitted the BOE or any other taxing district because that parcel, as its name suggests, is exempt from taxes and payments in lieu of taxes.

Value and directing the Butler County Auditor to revise his tax lists in accordance with the order [Supp. at 9-10]. No notice of appeal has ever been filed with respect to the BTA's June 23, 2009 order.

On September 4, 2009, the BOE filed a motion with the BTA asking that the June 23, 2009 order be vacated [Second Supp. at 2-12]. The BOE asserted that the Board of Revision had failed to serve the BOE with a copy of Westchester's notice of appeal to the BTA as R.C. 5717.01 required. The BOE made no claim that the valuations approved and ordered by the BTA were not the true values of the properties and made no assertion that the allocations set forth in the order were incorrect under the Enterprise Zone Agreement and the tax increment financing resolutions. Instead, the BOE maintained that the June 23, 2009 order should be vacated simply because the Board of Revision had not served it with a copy of Westchester's notice of appeal to the BTA.

In an order entered on September 22, 2009, the BTA denied the BOE's motion for lack of jurisdiction [App. at 8-10]. Citing numerous decisions from this Court, the BTA held that it had no jurisdiction to vacate its June 23, 2009 order because the time for appealing that order had expired [App. at 8-10]. The BOE timely appealed the BTA's September 22, 2009 order to this Court [App. at 1-7]. But it has never filed a notice of appeal of the June 23, 2009 order.

The BOE has presented no authority or even argument that the BTA's September 22, 2009 order was unlawful or unreasonable. In numerous decisions, this Court has explicitly held that administrative agencies, and the BTA in particular, have no jurisdiction to vacate or otherwise reconsider their decisions after the time for appealing from them has expired. The BTA committed no error, and its September 22, 2009 order should be affirmed.

In its merit brief, the BOE also argued that the BTA's June 23, 2009 order [App. at 11-12] approving the stipulation entered by the Board of Revision is void and should be vacated. But this Court has no jurisdiction to review that order. No notice of appeal has ever been filed with respect to it, and the time for doing so has long expired.

Westchester respectfully submits that the BTA's September 22, 2009 order denying the BOE's motion to vacate the June 23, 2009 order should be affirmed because it is neither unlawful nor unreasonable. The BTA had no jurisdiction to grant the BOE the relief requested. The BOE's assault upon the BTA's June 23, 2009 order should be disregarded because this Court has no jurisdiction to review that order.

ARGUMENT

The BTA Had No Jurisdiction To Vacate Its Order Entered On June 23, 2009

The BOE has appealed only from the BTA's order entered on September 22, 2009. *See* Notice of Appeal, App. at 1-7. Therein, the BTA denied the BOE's motion to vacate the BTA's order entered on June 23, 2009, approving the stipulated value of Westchester's property [App. at 8-10]. The BTA's September 22, 2009 order should be affirmed because it had no jurisdiction to vacate its order entered on June 23, 2009.

Proposition of Law No. 1:

The Board of Tax Appeals has no jurisdiction to vacate its orders affirming, reversing, vacating, modifying, or remanding the tax assessments, valuations, determinations, findings, computations, or orders of the county boards of revision.

This case was before the BTA on Westchester's appeal from the decision of the Butler County Board of Revision increasing the valuation of some of Westchester's property [Supp. at

6-8]. In its order entered on June 23, 2009, the BTA approved the valuations stipulated by the Board of Revision and ordered the Butler County Auditor to adjust the tax records accordingly [App. at 11-12].

On September 4, 2009, the BOE filed a motion with the BTA asking that the June 23, 2009 order be vacated [Second Supp. at 2-12]. The BTA denied the BOE's motion on September 22, 2009 holding that it had no jurisdiction [App. at 8-10]. The BTA was correct. It had no jurisdiction to vacate the June 23, 2009 order, and its September 22, 2009 order so holding should be affirmed.

In *Hal Artz Lincoln-Mercury, Inc. v. Ford Motor Co.* (1986), 28 Ohio St. 3d 20, 25, 502 N.E. 2d 590, this Court held:

It is beyond dispute that Ohio's administrative agencies ... possess jurisdiction to set aside or otherwise reconsider their decisions until the actual institution of a court appeal or until the expiration of the time for appeal, in the absence of specific statutory limitation to the contrary. [Citations omitted] (Emphasis added)

There is a "specific statutory limitation" upon the BTA's authority to set aside its valuation decisions. In pertinent part, R.C. 5717.03 provides:

(B) In case of an appeal from a decision of a county board of revision, the board of tax appeals shall determine the taxable value of the property whose valuation or assessment by the county board of revision is complained of ...

* * * * *

(F) The orders of the board [of tax appeals] may affirm, reverse, vacate, modify, or remand the tax assessments, valuations, determinations, findings, computations, or orders complained of in the appeals determined by the board, and the board's decision shall become final and conclusive for the current year unless reversed, vacated, or modified as provided in section 5717.04 of the Revised Code. When an order of the board becomes final the tax commissioner and all officers to whom such decision has been

certified shall make the changes in their tax lists or other records which the decision requires. (Emphasis added).

By its terms, R.C. 5717.03(F) states that the BTA's decisions on valuation, such as its June 23, 2009 order, are "final and conclusive ... unless reversed, vacated, or modified as provided in section 5717.04 of the Revised Code." R.C. 5717.04 pertains only to appeals to this Court and the courts of appeals from orders of the BTA. It does not authorize the BTA to vacate, set aside, or otherwise reconsider its own decisions. There is no statute or regulation permitting it to do so, and the BOE has cited none.

The BTA was correct. R.C. 5717.03(F) specifically provides that the June 23, 2009 order was "final and conclusive." The BTA had no jurisdiction, and its September 22, 2009 order denying the BOE's motion to vacate the June 23, 2009 order should be affirmed.

Proposition of Law No. 2:

The Board of Tax Appeals has no jurisdiction to vacate one of its orders after the time for appealing therefrom has expired.

Even if the BTA had the power to vacate its June 23, 2009 order, that power terminated upon the expiration of the time for appealing from that order. In *Hal Artz Lincoln-Mercury, Inc.*, *supra*, 28 Ohio St. 3d 20, 26, this Court also held:

When an appeal period is set by statute, it is commonly held that the agency must exercise its authority to grant or deny reconsideration of its decision before an appeal is actually commenced and prior to expiration of the appeal period. [Citations omitted].

The time for appealing a decision of the BTA is "thirty days after the date of the entry of the decision." R.C. 5717.04. In *Lutz v. Evatt* (1945), 144 Ohio St. 635, 636, 60 N.E. 2d 473,

this Court held that the BTA had no "power or authority" to vacate its decision after the expiration of the 30 day appeal period. *See also National Tube Co. v. Ayres* (1949), 152 Ohio St. 255, 262, 89 N.E. 2d 129 (BTA has control over its decisions only until the expiration of the time for appeal).

The time for appealing the June 23, 2009 order expired on July 23, 2009 -- -- "thirty days after the date of the entry of the decision." *See* R.C. 5717.04. The BOE filed its motion to vacate the June 23, 2009 order on September 4, 2009 [Second Supp. at 2-12], long after the time for appealing from that order expired. The BTA plainly had no jurisdiction to vacate its June 23, 2009 order.

The BOE discussed *Cincinnati School District Board of Education v. Hamilton County Board of Revision* (2000), 87 Ohio St. 3d 363, 721 N.E. 2d 40, at length. But nothing in that case suggests that the BTA had jurisdiction to grant the BOE's motion. Rather, it mandates the affirmance of the BTA's September 22, 2009 order. There, this Court held:

While we have recognized the inherent power of courts to vacate void judgments, we have recognized the inherent power of administrative boards to reconsider their decisions only in very limited circumstances. ... Although the BOR may have had the inherent power to reconsider its August 18, 1997 decision before the appeal time expired, the BOR decision vacating the August 18, 1997 decision under consideration here came after the appeal time for the August 18, 1997 decision had expired. We find no inherent power for a board of revision to vacate a decision, even a void decision, after the appeal time has run. If a board of revision were to review its prior decision after the appeal time had expired, the board would in effect be acting as a reviewing court for its own prior decision. Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions and even they can review decisions only where the appeals have been filed in a timely manner. (87 Ohio St. 3d at pp. 368-369; emphasis added)

The situation is no different here. To paraphrase from the holding in *Cincinnati School District*, if the BTA were to review its prior decision after the appeal time has expired, it would in effect be acting as a reviewing court for its own prior decision. But only this Court and the courts of appeals have been granted authority under R.C. 5717.04 to review BTA decisions, and they can do so only when appeals have been filed in a timely manner.

The BOE also emphasized this Court's mention in *Cincinnati School District* of "the inherent power of courts to vacate void judgments." *See Id.* at 368. But the Court was there addressing "the inherent power of courts" to vacate their own judgments, not those of administrative boards or agencies.

On this appeal from the BTA, this Court's authority is not "inherent," but is defined by R.C. 5717.04. And, the standard of review is whether the September 22, 2009 order is "reasonable and lawful." *See R.C. 5717.04. In Citizens Financial Corp. v. Porterfield* (1971), 25 Ohio St. 2d 53, 57-58, 266 N.E. 2d 828, this Court held:

It has been repeatedly held that it is not the function of this court to substitute its judgment on factual issues for that of the Board of Tax Appeals. We are limited to a determination from the record whether the decision reached by the board is unreasonable or unlawful. [Citations omitted]. The scope of review of decisions of the Board of Tax Appeals is circumscribed in this manner because it was not the intention of the General Assembly in providing for review in this Court from decisions of the Board of Tax Appeals to make this Court a "super" Board of Tax Appeals. (Emphasis added)

The BOE has not argued that the September 22, 2009 order was unlawful or unreasonable. It could not have done so. The BTA's decision is supported by statute and was based upon precedent from this Court which is squarely in point. The BTA had no jurisdiction to

vacate its June 23, 2009 order, and its September 22, 2009 order to that effect should be affirmed.

This Court Has No Jurisdiction To Review The June 23, 2009 Order

Proposition of Law No. 3:

An order of the Board of Tax Appeals is subject to judicial review only if a notice of appeal is filed with both the Court and the Board of Tax Appeals within thirty days after the entry of the order.

Although the notice of appeal states that it is appealing only from the September 22, 2009 order [App. at 1-7], the BOE seems to be asking that this Court reverse or vacate the BTA's June 23, 2009 order. This Court has no jurisdiction to do so. No timely notice of appeal of the June 23, 2009 order was filed with either this Court or the BTA.

In pertinent part, R.C. 5717.04 provides:

Such appeals [from the BTA] shall be taken within thirty days after the date of the entry of the decision of the board on the journal of its proceedings, as provided by such section, by the filing by appellant of a notice of appeal with the court to which the appeal is taken and the board.

Similarly, Rule II, Section 3(A)(1) of this Court's Rules of Practice provides in pertinent part:

A notice of appeal from the Board of Tax Appeals shall be filed with the Supreme Court and the Board within 30 days from the date of the entry of the decision of the Board ...

It is well-settled that the foregoing requirements of R.C. 5717.04 and Practice Rule II, Section 3(A)(1) are jurisdictional and that the untimely filing of a notice of appeal with either the

court or the BTA deprives the court of jurisdiction to hear the appeal. *See A. Schulman, Inc. v. Wilkins*, 112 Ohio St. 3d 1208, 2006-Ohio-6677, 859 N.E. 2d 553 at ¶¶ 2 and 4; *Kenney v. Evatt* (1945), 144 Ohio St. 369, 59 N.E. 2d 47; *Ahrns v. Bd. of Tax Appeals* (1970), 22 Ohio App. 2d 179, 181, 259 N.E. 2d 518.

The BOE did not file a notice of appeal until October 20, 2009 -- -- long past the thirty day deadline for appealing the BTA's June 23, 2009 order -- -- and that notice did not even provide that the BOE was appealing the June 23, 2009 order. *See* Notice of Appeal, App. 1-7. Accordingly, this Court has no jurisdiction to review it.

The BOE seems to be arguing that this Court has some kind of "inherent authority" to review the BTA's June 23, 2009 order because it is supposedly void. But it has cited no authority in support of that proposition.

This Court's authority to review decisions of the BTA is not "inherent," but instead is derived solely from R.C. 5717.04. And that statute specifically states that a timely-filed notice of appeal is required to invoke this Court's jurisdiction to review a decision of the BTA.

Nothing in *Cincinnati School District Board of Education v. Hamilton County Board of Revision* (2000), *supra*, 87 Ohio St. 3d 363, 721 N.E. 2d 40, which was cited by the BOE, is to the contrary. Therein, this Court held that administrative and judicial review of void decisions of county boards of revision can be obtained "only where the appeals have been filed in a timely manner." *See Id.* at 368-369.

This case is no different. Even if it could be said that the BTA's June 23, 2009 order is void -- -- and Westchester does not for a moment concede that it is -- -- it is subject to review and vacation by this Court only if the appeal therefrom was "filed in a timely manner." *Id.* at

368-369. Undisputedly, it was not, and this Court has no jurisdiction to review the BTA's June 23, 2009 order.

The BTA's June 23, 2009 Order Is Not Void

Proposition of Law No. 4:

The requirement in R.C. 5717.01 that county boards of revision serve notices of appeal is procedural, not jurisdictional.

Although this Court has no jurisdiction to review the BTA's June 23, 2009 order, Westchester will nonetheless address the BOE's contention that the order is void. The sole basis for the BOE's argument is that the BTA allegedly had no jurisdiction to issue the June 23, 2009 order because the Board of Revision did not serve the BOE with a copy of Westchester's notice of appeal to the BTA.

Westchester does not dispute that the BOE was a party to the proceedings before the Board of Revision, that R.C. 5717.01 required the Board of Revision to serve the BOE with a copy of Westchester's notice of appeal to the BTA, and that the Board of Revision failed to serve the BOE as required by R.C. 5717.01. But, contrary to the BOE's assertions, those circumstances did not divest the BTA of jurisdiction.

A case precisely in point is *Village of Waterville v. Spencer Tp.* (1974), 37 Ohio St.2d 79, 307 N.E. 2d 542, which involved an appeal to this Court from the BTA. In that case, one of the parties before the BTA was not served with a copy of the notice of appeal to this Court as R.C. 5717.04 expressly requires. This Court specifically held that the requirement of serving the notice of appeal set forth in R.C. 5717.04 was procedural, not jurisdictional.

Similarly, in *Gasper Township Board of Trustees v. Preble County Budget Commission*, 119 Ohio St. 3d 166, 2008-Ohio-3322, 893 N.E. 2d 136, the BTA dismissed an appeal from a decision of a county budget commission. Because the budget commission failed to serve all parties with a copy of the notice of appeal to the BTA as R.C. 5705.37 requires, the BTA held that it had no jurisdiction over the appeal. This Court reversed the BTA holding that the appellant had properly invoked the jurisdiction of the BTA by filing a copy of the notice of appeal with the budget commission and stated:

The statutory duty to provide notice to the other parties is that of the budget commission, not the party that filed the notice of appeal. *Id.* at ¶ 14.

This case is no different from the foregoing authorities. While the filing of a notice of appeal is jurisdictional, its service is not. The BTA had jurisdiction to issue the June 23, 2009 order because Westerchester timely filed its notice of appeal with both the BTA and the Board of Revision. The Board of Revision's failure to serve the BOE with a copy of the notice did not cause the June 23, 2009 order to be void.

Nothing in *Cincinnati School District Board of Education v. Hamilton County Board of Revision* (2000), *supra*, 87 Ohio St. 3d 363, 721 N.E. 2d 40, is to the contrary. In that case, this Court reaffirmed the settled law that owners are indispensable parties to proceedings before the county boards of revision to value their properties and the failure to notify them of such proceedings renders the boards' actions void. *Id.* at 366-367.

But, the BOE was not an indispensable party to Westerchester's appeal to the BTA, and it has not argued that it was. Only Westchester was indispensable. As this Court observed in *Columbus Apartments Assoc. v. Franklin Cty. Bd. of Revision* (1981), 67 Ohio St. 2d 85, 89-90, 423 N.E. 2d 147:

In that it is the owner's, not the school board's, property which is the subject of the complaint and evaluation proceeding before a board of revision, the owner is an indispensable party to that proceeding.

See also Dinner Bell Meats, Inc. v. Cuyahoga County Board of Revision (1982), 70 Ohio St. 2d 103, 435 N.E. 2d 412 (no error to exclude a board of education from property owner's appeal to the BTA).

In its June 23, 2009 order, the BTA approved a value stipulated by the Board of Revision itself. That body -- -- which consists of the county auditor, the county treasurer, and the president of the board of county commissioners or their designees, *see* R.C. 5715.02, -- -- was the appellee before the BTA. *See American Steel & Wire Co. v. Bd. of Revision* (1942), 139 Ohio St. 388, 389, 40 N.E. 2d 426. It was served with a copy of the notice of appeal, and it appeared and participated in the proceedings before the BTA. *See Stipulation of Value, Second Supp.* at 1.

No statute or decision of this Court requires that all parties before the board of revision be parties before the BTA, except, of course, the property owners and the boards of revision. Indeed, O.A.C. 5717-1-03(B), which provides for the voluntary appearance before the BTA of the parties before the board of revision, suggests just the opposite.

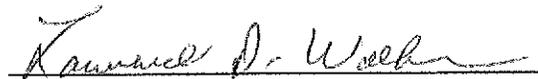
While the BOE certainly had a right to participate in the proceedings before the BTA, it was not indispensable. The Board of Revision was a party; it appeared and participated; and it represented the interests of the BOE. *See Dinner Bell Meats, Inc., supra*, 70 Ohio St. 2d at 105-106. The BOE's absence did not affect the BTA's jurisdiction. Its June 23, 2009 order was not void.²

² The BOE seems to blame Westchester for the Board of Revision's failure to serve a copy of the notice of appeal. As this Court held in *Gaspar Township Board of Trustees, supra*, 119 Ohio St. 3d 166 at ¶ 14, service of the notice was the Board of Revision's responsibility, not Westchester's. *See also* R.C. 5717.01. Westchester's notice of appeal fully complied with the requirements of

CONCLUSION

The September 22, 2009 order of the Board of Tax Appeals should be affirmed because it is neither unreasonable nor unlawful, and this Court should decline to review the Board's June 23, 2009 order for lack of jurisdiction.

Respectfully submitted,



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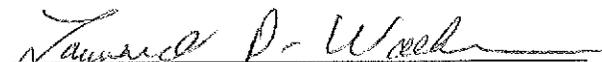
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I certify that true copies of the foregoing Brief were mailed, postage prepaid, this 21st day of January, 2010 to:

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O.A.C. 5717-1-04. It contained the identifying information for both the appellant (Westchester) and the appellee (the Board of Revision), the only parties to the appeal at the time the notice was filed. See *American Steel & Wire Co.*, *supra*, 139 Ohio St. at 389; O.A.C. 5717-1-04(C). Under the provisions of O.A.C. 5717-1-03(B), the BOE could not become a party to the appeal until after the notice of appeal was filed.

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. :

FILED
OCT 20 2009
BOARD OF TAX APPEALS
COLUMBUS, OHIO

**NOTICE OF APPEAL OF APPELLANT
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Columbus, Ohio 43215
(614) 466-6401 - fax

COUNSEL FOR APPELLEE
The Butler County Board of Revision
& Butler County Auditor

TAX COMMISSIONER OF OHIO
FILED
OCT 20 2009
CLERK OF COURT
SUPREME COURT 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:

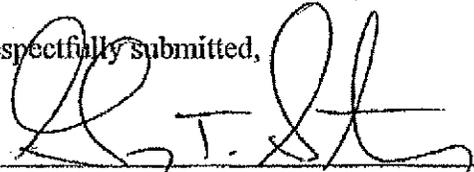
1. The Board of Tax Appeals erred and abused its discretion when it concluded that it was without jurisdiction to consider the Board of Education's motion to intervene and vacate a stipulation when:

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,



Gary T. Stedronsky (0079866)

Ennis, Roberts & Fischer, Co., L.P.A.

1714 West Galbraith Road

Cincinnati, OH 45239

(513) 421-2540

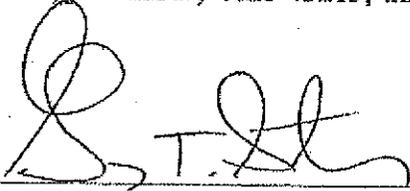
(513) 562-4986 - fax

gstedronsky@erflegal.com

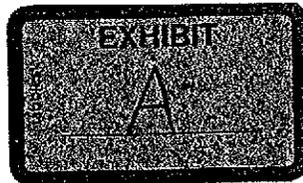
*Attorney for the Board of Education of the
Lakota Local School District*

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
For the County Appellees -	Robin N. Piper Butler County Prosecuting Attorney Bob C. Roberts Assistant Prosecuting Attorney P.O. Box 515 Hamilton, Ohio 45012
For the Bd. of Edn of the Lakota Local School District	Ennis, Roberts & Fischer Gary T. Stedronsky 1714 West Galbraith Road Cincinnati, Ohio 45239

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

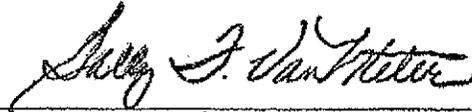
County Board of Revision (“BOR”), nor was it named as a party in the notice of appeal filed by appellant, MB West Chester, L.L.C. (“MB”).

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.



Sally F. Van Meter, Board Secretary

OHIO BOARD OF TAX APPEALS

MB Westchester, L.L.C.,)
)
 Appellant,)
)
 vs.)
)
 Butler County Board of Revision and)
 the Butler County Auditor,)
)
)
)
 Appellees.)

CASE NO. 2009-M-238
(REAL PROPERTY TAX)
ORDER
(Denying Motions to Intervene and Vacate Stipulation)

APPEARANCES:

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

Entered **SEP 22 2009**

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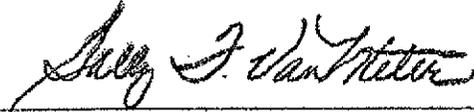
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The board denies the BOE's motion to intervene and vacate the stipulation.

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Sally F. Van Meter, Board Secretary

TAXABLE VALUE

<u>PARCEL NUMBER</u>	<u>LAND</u>	<u>BUILDING</u>	<u>TOTAL</u>
M5610-033.000-066	\$ 884,580	\$ - 0 -	\$ 884,580
M5610-033.000-902 T	\$2,840,900	\$12,427,730	\$15,268,630
M5610-033.000-905 A	\$ - 0 -	\$35,475,000	\$35,475,000

It is further ordered that the stipulated values referenced above apply to tax years 2007 and 2008 and thereafter be carried forward according to law.

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, Secretary

Ohio Revised Code § 5717.03

(A) A decision of the board of tax appeals on an appeal filed with it pursuant to section 5717.01, 5717.011, or 5717.02 of the Revised Code shall be entered of record on the journal together with the date when the order is filed with the secretary for journalization.

(B) In case of an appeal from a decision of a county board of revision, the board of tax appeals shall determine the taxable value of the property whose valuation or assessment by the county board of revision is complained of, or in the event the complaint and appeal is against a discriminatory valuation, shall determine a valuation which shall correct such discrimination, and shall determine the liability of the property for taxation, if that question is in issue, and the board of tax appeals' decision and the date when it was filed with the secretary for journalization shall be sent by the board to all persons who were parties to the appeal before the board, to the person in whose name the property is listed, or sought to be listed, if such person is not a party to the appeal, to the county auditor of the county in which the property involved in the appeal is located, and to the tax commissioner.

In correcting a discriminatory valuation, the board of tax appeals shall increase or decrease the value of the property whose valuation or assessment by the county board of revision is complained of by a per cent or amount which will cause such property to be listed and valued for taxation by an equal and uniform rule.

(C) In the case of an appeal from a review, redetermination, or correction of a tax assessment, valuation, determination, finding, computation, or order of the tax commissioner, the order of the board of tax appeals and the date of the entry thereof upon its journal shall be sent by the board to all persons who were parties to the appeal before the board, the person in whose name the property is listed or sought to be listed, if the decision determines the valuation or liability of property for taxation and if such person is not a party to the appeal, the taxpayer or other person to whom notice of the tax assessment, valuation, determination, finding, computation, or order, or correction or redetermination thereof, by the tax commissioner was by law required to be given, the director of budget and management, if the revenues affected by such decision would accrue primarily to the state treasury, and the county auditors of the counties to the undivided general tax funds of which the revenues affected by such decision would primarily accrue.

(D) In the case of an appeal from a municipal board of appeal created under section 718.11 of the Revised Code, the order of the board of tax appeals and the date of the entry thereof upon the board's journal shall be sent by the board to all persons who were parties to the appeal before the board.

(E) In the case of all other appeals or applications filed with and determined by the board, the board's order and the date when the order was filed by the secretary for journalization shall be sent by the board to the person who is a party to such appeal or application, to such persons as the law requires, and to such other persons as the board deems proper.

(F) The orders of the board may affirm, reverse, vacate, modify, or remand the tax assessments, valuations, determinations, findings, computations, or orders complained of in the appeals determined by the board, and the board's decision shall become final and conclusive for the current year unless reversed, vacated, or modified as provided in section 5717.04 of the Revised Code. When an order of the board becomes final the tax commissioner and all officers to whom such decision has been sent shall make the changes in their tax lists or other records which the decision requires.

(G) If the board finds that issues not raised on the appeal are important to a determination of a controversy, the board may remand the cause for an administrative determination and the issuance of a new tax assessment, valuation, determination, finding, computation, or order, unless the parties stipulate to the determination of such other issues without remand. An order remanding the cause is a final order. If the order relates to any issue other than a municipal income tax matter appealed under sections 718.11 and 5717.011 of the Revised Code, the order may be appealed to the court of appeals in Franklin county. If the order relates to a municipal income tax matter appealed under sections 718.11 and 5717.011 of the Revised Code, the order may be appealed to the court of appeals for the county in which the municipal corporation in which the dispute arose is primarily situated.

(H) At the request of any person that filed an appeal subject to this section, the decision or order of the board of tax appeals issued pursuant to division (B), (C), (D), or (E) of this section shall be sent by certified mail at the requestor's expense.

Ohio Revised Code § 5717.04

The proceeding to obtain a reversal, vacation, or modification of a decision of the board of tax appeals shall be by appeal to the supreme court or the court of appeals for the county in which the property taxed is situate or in which the taxpayer resides. If the taxpayer is a corporation, then the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the supreme court or to the court of appeals for the county in which the property taxed is situate, or the county of residence of the agent for service of process, tax notices, or demands, or the county in which the corporation has its principal place of business. In all other instances, the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the court of appeals for Franklin county.

Appeals from decisions of the board determining appeals from decisions of county boards of revision may be instituted by any of the persons who were parties to the appeal before the board of tax appeals, by the person in whose name the property involved in the appeal is listed or sought to be listed, if such person was not a party to the appeal before the board of tax appeals, or by the county auditor of the county in which the property involved in the appeal is located.

Appeals from decisions of the board of tax appeals determining 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 instituted by any of the persons who were parties to the appeal or application before the board, by the person in whose name the property is listed or sought to be listed, if the decision appealed from determines the valuation or liability of property for taxation and if any such person was not a party to the appeal or application before the board, by the taxpayer or any other person to whom the decision of the board appealed from was by law required to be sent, by the director of budget and management if the revenue affected by the decision of the board appealed from would accrue primarily to the state treasury, by the county auditor of the county to the undivided general tax funds of which the revenues affected by the decision of the board appealed from would primarily accrue, or by the tax commissioner.

Appeals from decisions of the board upon all other appeals or applications filed with and determined by the board may be instituted by any of the persons who were parties to such appeal or application before the board, by any persons to whom the decision of the board appealed from was by law required to be sent, or by any other person to whom the board sent the decision appealed from, as authorized by section 5717.03 of the Revised Code.

Such appeals shall be taken within thirty days after the date of the entry of the decision of the board on the journal of its proceedings, as provided by such section, by the filing by appellant of a notice of appeal with the court to which the appeal is taken and the board. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten days of the date on which the first notice of appeal was filed or within the time otherwise prescribed in this section, whichever is later. A notice of appeal shall set forth the decision of the board appealed from and the errors therein complained of. Proof of the filing of such notice with the board shall be filed with the court to which the appeal is being taken. The court in which notice of appeal is first filed shall have exclusive jurisdiction of the appeal.

In all such appeals the tax commissioner or all persons to whom the decision of the board appealed from is required by such section to be sent, other than the appellant, shall be made appellees. Unless waived, notice of the appeal shall be served upon all appellees by certified mail. The prosecuting attorney shall represent the county auditor in any such appeal in which the auditor is a party.

The board, upon written demand filed by an appellant, shall within thirty days after the filing of such demand file with the court to which the appeal is being taken a certified transcript of the record of the proceedings of the board pertaining to the decision complained of and the evidence considered by the board in making such decision.

If upon hearing and consideration of such record and evidence the court decides that the decision of the board appealed from is reasonable and lawful it shall affirm the same, but if the court decides that such decision of the board is unreasonable or unlawful, the court shall reverse and vacate the decision or modify it and enter final judgment in accordance with such modification.

The clerk of the court shall certify the judgment of the court to the board, which shall certify such judgment to such public officials or take such other action in connection therewith as is required to give effect to the decision. The "taxpayer" includes any person required to return any property for taxation.

Any party to the appeal shall have the right to appeal from the judgment of the court of appeals on questions of law, as in other cases.

Ohio Administrative Code § 5717-1-03(B)

Any party before the board of revision, who desires to participate in an appeal before the board of tax appeals as an appellee, shall enter an appearance with the board of tax appeals within thirty days of the mailing of notice of such appeal by the board of revision.

Ohio Administrative Code § 5717-1-04(C)

The notice of appeal should set forth the name, address, telephone number, and fax number, if available, of all parties together with the name, address, telephone number, fax number, and attorney registration number, if applicable, of appellant's authorized agent or attorney at law who executed such notice.