

ORIGINAL

IN THE SUPREME COURT OF OHIO

FRED SANBORN, et al.,	:	CASE NO. 2013-1598
	:	
Appellants,	:	
	:	On Appeal from the Ohio Board of
vs.	:	Tax Appeals
	:	
INDIAN HILL BOARD OF EDUCATION,	:	BTA Case No. 2010-K-938
et al.,	:	
	:	
Appellees.	:	

MERIT BRIEF OF APPELLEES INDIAN HILL BOARD OF EDUCATION AND
INDIAN HILL EXEMPTED VILLAGE SCHOOL DISTRICT

Kelsey E. Hackem (PHV-4719-2014)
Maurice A. Thompson (0078548)
1851 Center for Constitutional Law
208 E. State Street
Columbus, Ohio 43215
Tel: (614) 340-9817
Fax: (614) 365-9564
Khackem@OhioConstitution.org
Mthompson@OhioConstitution.org
Attorneys for Appellants

Michael DeWine (0009181)
Ohio Attorney General
30 E. Broad Street, 17th Floor
Columbus, Ohio 43215
Tel: (614) 466-4320
Fax: (614) 466-5087
Counsel for Appellee
Joseph W. Testa, Tax Commissioner
of Ohio

Joseph T. Deters (0012084)
Hamilton County Prosecuting Attorney
Thomas J. Scheve (0011236P)
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
Tel: (513) 946-3049
Fax: (513) 946-3018
Tom.Scheve@hcpros.org
Attorneys for Appellee, Hamilton County
Budget Commission

Bruce I. Petrie, Jr. (0018179)
Harry J. Finke IV (0018160) (Counsel of
Record)
Graydon Head & Ritchey LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, OH 45202-3157
Tel: (513) 629-2731
Fax: (513) 651-3836
hfinke@graydon.com
Attorneys for Appellees, Indian Hill Board of
Education and Indian Hill Exempted Village
School District

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INTRODUCTION

This is an appeal from a decision of the Ohio Board of Tax Appeals (“BTA”) affirming a decision of the Hamilton County Budget Commission (“Budget Commission”) that allowed the Board of Education (“School Board”) of the Indian Hill Exempted Village School District (“District”) to move 1.25 inside mills from the District’s general fund to a permanent improvement fund. The School Board, whose members are chosen by and accountable to the voters of the District, based its decision to move the inside mills on the needs of the District. As the record amply demonstrates, the School Board carefully evaluated those needs in light of the School Board’s desire to maintain the standard of excellence that the District, its students, and its taxpayers benefit from and have come to expect.

The School Board reached its unanimous decision after holding a public hearing and otherwise complying with applicable statutory requirements. In addition, the School Board held several public forums and made a concerted effort to seek input from District residents and to keep them informed as the School Board weighed and ultimately reached its decision.

After receiving evidence and conducting two hearings of its own, the Budget Commission approved the School Board’s request. Appellants, who are three individual taxpayers who opposed the School Board’s request, appealed to the BTA. The parties agreed to submit the appeal to the BTA on the record before the Budget Commission, certain other stipulated evidence, and written briefs, waiving any further evidentiary hearing.

The BTA affirmed, concluding that appellants had not “demonstrated that either Indian Hill or the budget commission failed to comply with the statutory procedures regarding the development, submission, or technical approval of movement of 1.25 inside mills to a permanent improvement fund. Indian Hill submitted a budget which ‘clearly required’ specific revenue to

pay for the costs of itemized improvements which were eligible for payment via such fund.” BTA Decision at 4.¹ Appellants timely appealed to this Court. The School Board and District respectfully request that the Court affirm the BTA.

STATEMENT OF FACTS

Background—The Indian Hill Exempted Village School District

The Indian Hill Exempted Village School District consistently meets the State of Ohio’s standards of excellence, and its schools are among the best in the state and nation. In the 2010-2011 school year, the District received the state’s highest ranking, “Excellent with Distinction,” marking the 13th consecutive year that the District received an Excellent ranking from the state. See 2010/2011 Indian Hill Exempted Village School District Annual Report (“2010/2011 Annual Report”), attached as Exhibit A to Indian Hill Appellees’ Merit Brief in the Board of Tax Appeals, at 2. In its most recent rankings, U.S. News rated Indian Hill High School #3 in the State of Ohio and #134 in the nation. See <http://www.usnews.com/education/best-high-schools/ohio/districts/indian-hill-exempted-village/indian-hill-high-school-15388>.

The School Board’s focus on educational excellence at the highest levels of public education is, rightly, the single mission that the School Board’s decisions and budgetary judgments serve. That is reflected in the measures that are most important: the results, performance, and educational progress of the District’s students. The District boasts a graduation rate of 98.8% and SAT and ACT averages significantly above both the state and national averages. See 2010/2011 Annual Report, attached as Exhibit A to Indian Hill Appellees’ Merit Brief in the Board of Tax Appeals, at 4. Most District high school graduates

¹ The BTA Decision is available on-line as Sanborn v. Hamilton County Budget Commission, BTA Case No. 2010-938, 2013 Ohio Tax LEXIS 4598 (2013). Citations in this brief to page

continue their education, and many are accepted at the nation's top colleges and universities. See id. at 5. The District provides numerous advanced placement courses and a wide variety of extracurricular and athletic activities. Id. at 6-11.

On the fiscal side, the District has balanced its budget for 15 of the past 19 years. Id. at 3. It enjoys the highest possible bond rating by Moody's. Id. at 12.

In 2010-2011, nearly 81% of all of the District's funds came from local revenue sources. Id. In that same year, nearly 92% of the District's General Fund revenues came from real estate taxes. Id. at 14.

In short, relying primarily on local property taxes, the District, under the leadership of the School Board, has been able to achieve and maintain a level of educational quality and performance that rank it among the nation's best. Indeed, the quality of the District's schools is frequently cited as one of the most important factors, if not the most important factor, in attracting residents to the District. See Supplement to Appellants' Merit Brief ("Appellants' Supplement"), Supplement E, April 13, 2010 Transcript on Appeal from the Hamilton County Budget Commission ("Transcript"), at S-46, testimony of Eppa Rixey (former Mayor of The Village of Indian Hill). Yet while the District has the top adjusted gross income in the state among school districts, it has been able to achieve its distinction with only the 15th highest per-pupil expenditures in the state. Id. at S-53, testimony of Ted Jaroszewicz (former School Board member and finance committee chairman).²

numbers in the BTA Decision refer to the version published by the BTA itself and attached to the Merit Brief of Appellants, not to the on-line version.

² Throughout the Transcript, Mr. Jaroszewicz's last name was misspelled "Yearashevich."

The Unanimous Vote To Move Inside Mills

On December 15, 2009, the School Board voted unanimously to move 1.25 inside mills from current expense to permanent improvements. See id., Appellants' Supplement, Supplement A (Minutes of 12/15/09 School Board meeting). The School Board approved its 2011 tax budget at a meeting on January 12, 2010.

The District submitted its proposed budget to the Budget Commission, and the Budget Commission held two hearings on the matter.³ Testimony before the Budget Commission and other relevant evidence demonstrated that the School Board's decision complied with applicable law, both procedurally and substantively, and was based on careful deliberation with input from the public above and beyond that required by law.⁴

Testimony Before the Budget Commission

This case arises, in large part, from appellants' disagreement with the considered judgment of the elected School Board that the movement of 1.25 inside mills was required by the District's budget. The record before the Budget Commission and the BTA demonstrated the solid factual foundation on which that judgment rested, thus supporting the Budget Commission's and BTA's refusal to substitute their own judgment for that of the School Board.

Seven people testified before the Budget Commission in support of the School Board. In their brief, appellants quoted selectively from that testimony, providing little or no context and omitting much that was relevant. A more detailed look at that testimony will provide the Court

³ After receiving testimony and other evidence on April 13, 2010, the Budget Commission tabled the matter until its next meeting on April 30, 2010, in order to have more time to consider the issues raised. See Appellants' Supplement, Supplement E, April 13, 2010 Transcript, at S-57.

⁴ Appellants do not contend that the School Board failed to comply with statutory procedural requirements. Rather, their challenge is based upon the substance of the decision. In any event, the School Board followed the statutory procedural mandates. See Appellants' Supplement,

with a clearer picture of the evidence, received by the Budget Commission, that comprises the factual record below.

Julia Toth

The first witness on behalf of the School Board was Julia Toth, the Treasurer of the District. Ms. Toth noted initially that the School Board has historically been very cautious and prudent with its expenditures and extremely mindful of its revenue sources. Appellants' Supplement, Supplement E, April 13, 2010 Transcript, at S-35. She described the triple-A rating that Moody's has awarded to the District. Id. at S-35-36.

Significantly, she advised the Budget Commission that the School Board had studied its revenue and expenditures "for the last couple of years" with an eye toward creating a permanent improvement fund that would allow the District "to continue to provide the world class opportunities we wish our students to have." Id. at S-36. She explained that the School Board was "expecting and anticipating several threats to our revenue sources over the next couple of years, and it is in that regard that this topic has come up." Id. She said that the School Board was "deeply concerned about a lot of pressure on our budget going forward. But primarily we do need to keep the facilities that our community has invested in place and in good condition." Id.

Ms. Toth also provided a detailed breakdown of the various capital expenses to be paid out of the permanent improvement fund established with the inside mills. See Appellants' Supplement, Supplement E, April 13, 2010 Transcript, at S-54-55, and Supplement to Merit Brief of Appellees Indian Hill Board of Education and Indian Hill Exempted Village School District ("Appellees' Supplement") at S-1-4 (Transcript Exhibit F – District Capital Planning

Supplement E, April 13, 2010 Transcript, at S-39, statement of David Nurre, Hamilton County Director of Settlement and Budget (confirming adherence to procedural requirements).

Items). That breakdown helped show that movement of inside mills was clearly required under the budget approved by the School Board.

Tim Sharp

The School Board's next witness was Tim Sharp, a member and then chairman of the Finance Committee of the School Board. Mr. Sharp testified as to the reasons behind the School Board's decision to move the inside mills. He noted that the decision "was not an easy one," but was based on an evaluation of fiscal trends over "a number of years." See Appellants' Supplement, Supplement E, April 13, 2010 Transcript, at S-39. He also pointed out that the School Board had "been trying to keep our population educated about some of the trends . . . that happened over the years" and had held "a number of financial forums" for that purpose. Id. He particularly emphasized the School Board's efforts to keep the residents of the District informed and involved, explaining that "in financial forums we've been trying to include the community. We've done a number of publications that we've been telling the story about what's happening around us and so forth in the long term view." Id. at S-40.

Mr. Sharp described the decline in financial support that the District could expect from the State of Ohio and the uncertainty over property values on which the District's revenues were dependent. Id. at S-39-40. In deciding to move the inside mills, the School Board's goal was "to maintain our quality of education," which Mr. Sharp described as "world class." Id. The School Board tried to make that decision "inclusively" by "going beyond the statute of public hearing and so forth and [holding] a number of meetings, a number of publications, educating our citizens about what was going on." Id. In the end, following those deliberations and with input from the public, the School Board concluded that moving the inside mills was "the prudent thing to do." Id. at S-41.

Ted Jaroszewicz

Ted Jaroszewicz was the School Board's next witness. He had been a member of the School Board for eight of the last ten years and had been chairman of the finance committee during the period of time when the Board made the decision to move the inside mills. See id. at S-42.

In testimony described by Hamilton County Treasurer Robert Goering as "very helpful," see id., Mr. Jaroszewicz provided specifics on the fiscal issues that Mr. Sharp discussed. He explained that state funding, in the form of direct funding or reimbursement of tangible property taxes, would go from approximately \$2.5 million to zero in the next three to five years. He also explained that property values in Indian Hill, especially at the high end, had declined anywhere from 25% to 40%. On balance, the School Board determined that somewhere between \$2.5 and \$4 million in funding was at risk. Id. He also explained the School Board's prudent approach to budget issues, id., and talked about cost issues that the School Board would have to face, including personnel costs. Id.

Dr. Jane Knudson

The Superintendent of the District, Dr. Jane Knudson, was the next witness for the School Board. She described some of the capital improvement projects that the District had delayed and talked about some of the permanent improvements to be funded by the inside millage. Those included "technology infrastructure, the maintenance and upkeep of school buildings, playgrounds, athletic fields, auditoriums, and grounds." Id. at S-42-43. She explained that those were "delayed projects that clearly now need to be addressed." Id. at S-43.

It is worth noting that the capital projects described by Superintendent Knudson are consistent with, reflected in, and a subset of, the line items shown on the list of District Capital

Planning Items submitted to the Budget Commission by Treasurer Toth. See Appellees' Supplement at S-1-4.

Doloris Learmonth, Esq.⁵

Doloris Learmonth, an attorney at Peck Shaffer & Williams, was next to address the Budget Commission. She testified that

as part of their due diligence the Indian Hill Board came to us, to our law firm, as bond and levy council [sic] and asked our opinion on the legality and validity of what they wanted to do, that is move the inside millage. And I wanted the Board [sic] to know that we did give them our opinion . . . So long as the school district's budget clearly shows the need for the permanent improvement levy, which of course it does and Mr. Nurre has said so, and the procedures set forth in section 5705.314 which governs the moving of inside millage, are followed to move a portion of the millage, then such an action by the Board of Education of the Indian Hill Schools would be a legal and valid action of the Board.

Appellants' Supplement, Supplement E, April 13, 2010 Transcript, at S-43. In short, attorney Learmonth made clear that the Board, before moving the inside mills, had obtained the opinion of its bond and levy counsel that moving the inside mills was both proper and legal.

Sourushe Zandvakili

The next witness was Sourushe Zandvakili, Ph.D., a parent in the District and the head of the Economics Department at the University of Cincinnati. Id. Dr. Zandvakili spoke at some length as to why, as both a parent and an economist, he supported the School Board's decision to move the inside mills. Among other things, he explained, "I have a third grader and a fifth grader. And I would like for them to get a quality education. That's why I moved into that school district." Id. at S-44.

⁵ Throughout the Transcript, Doloris Learmonth's first name was misspelled "Delores."

Eppa Rixey

The final witness on behalf of the School Board was Eppa Rixey. Mr. Rixey had just finished his term as Mayor of The Village of Indian Hill, and he is also an insurance agent whose agency, which was founded in 1888, writes many policies on homes in the District. Id. at S-46.

Mr. Rixey talked generally about financial pressures faced not only by the District but also by The Village of Indian Hill itself. He also talked about his experience as an insurance agent, including his experience dealing with employees of area businesses, and its largest corporations, who were moving to Cincinnati from out of town. Id. When he would ask people in those circumstances why they decided to move to a particular community in Cincinnati, “The universal answer I get to my question is: school district.” Id. He also spoke about his service as Mayor of Indian Hill and the importance of maintaining real estate values in the Village. He said, “From where I sit, the best thing you do to hold values up, is have a good school district. You can put billboards up, come live in Indian Hill we’ve got great walking paths. But what brings people to the school district is the quality of the school. And the finances that you have in place to keep that school district where it is, are what make it able to do that.” Id.

Appellants’ Presentation Before the Budget Commission

Appellants Ruth Hubbard, Richard Cocks, and Fred Sanborn appeared before the Budget Commission in opposition to the School Board. See id. at S-47-53. Boiled down to its essence, their position was that the District already had enough money and that, therefore, the funds generated by the movement of inside mills were not clearly required by the District’s Budget. See, e.g., id. at S-47 (testimony of Ruth Hubbard), 18 (testimony of Richard Cocks). Fundamentally, they were inviting the Budget Commission to accept their notion of fiscal

responsibility in the District in lieu of that of the elected members of the School Board. It was an invitation the Budget Commission correctly declined.

ARGUMENT

Appellants' "Assignment of Error"⁶

The Board of Tax Appeals erroneously concluded that the un-voted tax increase at issue, the 1.25 inside millage move, was "clearly required for the ensuing fiscal year" by the Indian Hill Exempted Village School District.

Indian Hill Appellees' Proposition of Law

Neither a county budget commission nor the Board of Tax Appeals is empowered to evaluate the wisdom of a school district's budget or to exercise judgment regarding the desirability of the expenditures included in the budget.

The Court's Deference to the BTA's Factual Determinations

The Court defers to the BTA's factual determinations. "The BTA is responsible for determining factual issues, and if the record contains reliable and probative support for the BTA's determinations, this court will affirm them." Olentangy Local Schools Bd. of Ed. v. Delaware Cty. Bd. of Revision, 125 Ohio St.3d 103, 2010-Ohio-1040, 926 N.E.2d 302, ¶15. See also Bd. of Ed. of the Dublin City Schools v. Franklin Cty. Bd. of Revision, ___ Ohio St.3d ___, 2013-Ohio-4543, ___ N.E.2d ___, ¶13 ("And, we will uphold the BTA's determination of fact if the record contains reliable and probative evidence supporting the BTA's determination."); Cummins Property Services, L.L.C. v. Franklin Cty. Bd. of Revision, 117 Ohio St.3d 516, 2008-Ohio-1473, 885 N.E.2d 222, ¶38 ("The BTA's evaluation of the evidence typically merits our deference, and we see no reason as a matter of law to disturb the BTA's conclusion in this case.").

⁶ Appellants did not include a proposition of law as required by S.Ct.R.Prac. 16.02(B)(4).

In this case, the BTA determined, as fact, that the District “submitted a budget which ‘clearly required’ specific revenue to pay for the costs of itemized improvements which were eligible for payment via such [permanent improvement] fund.” BTA Decision at 4. As the evidentiary summary above demonstrates, that determination is supported by reliable and probative evidence and merits the Court’s deference.

The BTA’s Recognition of the Budget Commission’s Limited Discretion

Not only was the BTA correct as to the facts, it was also correct as to the law. The BTA, like the Budget Commission, recognized that under Ohio law it could not substitute its judgment for the School Board’s with respect to the District’s movement of inside mills.

The authority most clearly on point with this case is Ohio Attorney General Opinion 2005-002, 2005 Ohio Op. Atty. Gen. 2-11, 2005 WL 263797 (“Attorney General Opinion”). In that opinion, the Attorney General addressed the issue of a county budget commission’s authority to approve or deny the budget request of a school district to levy inside mills. *Id.* at *1.

The Attorney General noted that, under R.C. 5705.31, a county budget commission was without discretion to reduce, or decline to approve, levies in excess of the ten-mill limitation, “provided that they have been properly authorized.” *Id.* at *7. The Attorney General also recognized that “the county budget commission may not approve any tax levy unless the amount to be levied is ‘clearly required’ by the budget or other information submitted by the subdivision or taxing unit.” *Id.*

The Attorney General then quoted the following language from the Court’s opinion in Village of South Russell v. Geauga County Budget Commission, 12 Ohio St.3d 126, 132, 465 N.E.2d 876 (1984):

Under this section of the tax levy law [R.C. 5705.341], the phrase “clearly required by a budget” does not require, nor grant, the authority to a budget

commission to make a judgment call on the desirability of programs of the health district, or in this sense to determine the “need” of the district for the sums as set forth in budget as submitted. The review of the budget commission of tax levies is one basically of whether there has been excessive taxation, *i.e.*, will the tax generate more funds than shown to be needed within the budget of the district or subdivision, and whether the funds are budgeted for the appropriate purpose as voted by the electorate.

Attorney General Opinion at *8 (brackets in original).

Relying on that language, the Attorney General noted that a county budget commission was obligated to see that a school district did not levy a tax that would generate more money than the amount clearly required by the district’s budget. *Id.* But he continued as follows:

“However, the county budget commission is not empowered to evaluate the wisdom of the school district’s budget or to exercise judgment regarding the desirability of the expenditures included in the budget.” *Id.* (emphasis added)

The Budget Commission in this case cited the Attorney General Opinion when it recognized, correctly, that it was not empowered to second guess the School Board with respect to the District’s budgetary needs. See Appellants’ Supplement, Supplement H, April 20, 2010 Transcript, at S-76.

The BTA agreed. It first quoted the same language quoted above from Village of South Russell, emphasizing the language that prohibits a budget commission from substituting its own judgment for that of the taxing authority. See BTA Opinion at 3. It then cited with approval the Attorney General Opinion, once again emphasizing the language—the language quoted in bold italics above—that prohibits a budget commission from evaluating the wisdom of a school district’s budget or exercising independent judgment as to the desirability of budgetary expenditures. *Id.* at 3-4.

The principle set forth in Village of South Russell and confirmed in the Attorney General Opinion—that a budget commission may not substitute its judgment for that of a taxing authority with respect to the desirability of expenditures included in a budget or evaluate the wisdom of that budget—is recognized in other Ohio judicial decisions and Attorney General opinions. For example, in State ex rel. Board of County Commissioners of Lucas County v. Austin, 158 Ohio St. 476, 110 N.E.2d 134 (1953), this Court held that a budget commission has no power to determine whether levied funds would actually be used for purposes for which a tax was authorized. In that case, a county budget commission refused to certify a levy to raise funds to expand a county home on the grounds that the purpose of an earlier related levy for the construction of the county home had already been accomplished. The budget commission refused certification because it believed “that the tax, if collected, could not be used for the purpose for which it was voted.” Id. at 136.

The Court concluded that the determination of whether the funds could properly be used to expand the county home was not within the province of the Budget Commission. Id. at 137. Rather, the Court held, that determination was left to the discretion of the taxing authority. Id.

While the facts of Austin are different from those in this appeal, the principle in that case is applicable here: a budget commission may not go beyond its statutory authority and substitute its judgment for that of a school board or other taxing authority. It is not up to a budget commission to determine the needs of a taxing authority. “[W]hen a taxing authority has made the decision that such a need exists, the budget commission has no power to overrule that decision. The commission’s duty is to see that any tax levied will not generate more revenue than is necessary to meet the needs. The taxing authority, however, is authorized to determine what the needs are.” 1979 Ohio Op. Atty. Gen. 2-49, 1979 WL 39242, at *3. See also 1986

Ohio Op. Atty. Gen. No. 21, 1986 Ohio AG LEXIS 100, at 15 n. 5 (“Where, however, the school district adopts a budget which shows a need for the entire amount of a levy that has been properly authorized, the county budget commission must approve the levy without modification.”).

Indeed, a budget commission may not substitute its judgment with respect to a need for budgeted funds even when the purpose for which the funds were originally intended no longer exists, as long as other statutory requirements have been fulfilled. In Opinion 2006-006, the Ohio Attorney General addressed a situation where a tax levy had been approved for the general operation of the Shelby Board of Health. 2006 Ohio Op. Atty. Gen. 2-55, 2006 WL 758351 at *1. Thereafter, the Shelby Board of Health was abolished. *Id.* Analyzing that scenario in light of Village of South Russell, *supra*, and Attorney General Opinion 2005-002, *supra*, the Attorney General said, “Based on the following, the county budget commission may not disapprove or modify a tax levy in excess of the ten-mill limitation for the general operation of a city board of health even though the board of health has been abolished, provided that the tax levy was properly authorized, approved by the electors of the city, and the amounts to be levied are clearly required by the city’s budget or other information submitted by the city.” *Id.*

This principle is well-recognized in the arena of school district finance and school board law. Citing Village of South Russell, *supra*, the *Ohio School Law Manual* describes the limitations of authority and obligations of a county budget commission as follows:

A series of court decisions has underscored the view that the authority of county budget commissions over school district tax levies is limited to the determination of whether the levy is properly authorized and the need for the proceeds demonstrated in the tax budget. Thus, budget commissions have no authority to refuse to levy such taxes if these conditions have been met.

Carey, *Ohio School Law Manual* (Matthew Bender & Co. 2010), at 452, §5.22 (emphasis added).

In short, applicable Ohio law, including this Court's seminal statement in Village of South Russell, consistently requires deference to a taxing authority, in this case the School Board, when it comes to determining the taxing authority's own needs and deciding whether budgeted amounts fulfill those needs. Here, the School Board provided the Budget Commission with a detailed breakdown of the capital expenditures to be funded by the permanent improvement fund created through the movement of inside mills. See Appellees' Supplement at S-1-4. That breakdown demonstrated that the movement of 1.25 inside mills was "clearly required" for capital improvements budgeted by the District. Id. See also Appellants' Supplement, Supplement H, April 20, 2010 Transcript, at S-74-78.

Once the School Board made that showing, both the Budget Commission and the BTA were without discretion to substitute their own judgment for either the uses to which the funds would be put or the wisdom of the expenditures. See, e.g., Village of South Russell, supra. The Budget Commission correctly recognized the limitations on its authority and properly approved the District's budget. The BTA, recognizing the limitations on its own authority, correctly affirmed that decision.

City of Portsmouth v. Scioto County Budget Commission, BTA Case No. 2002-T-1690, 2003 WL 1092145 (2003), cited by appellants, is not to the contrary and is factually distinguishable from this case. That case, which did not address the movement of inside millage, involved a levy by the City of Portsmouth to provide funds "to pay the interest, sinking fund, and retirement charges on all bonds and notes of the City of Portsmouth[.]" Id. at *2. The bond retirement fund ("Fund 401") had been accumulating a surplus, because Portsmouth had been

paying expenses related to bond retirement out of its general fund, not Fund 401. Id. The budget commission refused to certify the levy and, under the facts of that case, the BTA affirmed.

As the BTA correctly recognized, that case is easily distinguishable from this one. See BTA Decision at 4, n. 4 (“[City of Portsmouth] does not dictate disregarding the above-cited authority that a budget commission may not substitute its own judgment for that of a school board where it has been demonstrated that the movement of specified inside millage is ‘clearly required’ based upon the budget submitted.”).

City of Portsmouth did not involve a scenario where the taxing authority had well-founded and legitimate concerns about a decline in revenue such as those present in this case. Furthermore, bond-retirement expenses, unlike the capital-improvement expenditures at issue in this appeal, tend to be fixed and, therefore, more easily quantifiable, thus reducing the justification for any fund surplus like that accumulated by the City of Portsmouth.

Most importantly, as the BTA said, City of Portsmouth did not purport to modify the principle, recognized by this Court in Village of South Russell and confirmed in the other authorities discussed above, that a budget commission may not substitute its judgment for a school board or other taxing authority where the tax levied is shown to be needed within the budget submitted by that taxing authority. See Village of South Russell, supra, at 133.

In City of Portsmouth, the BTA simply found that the submitted budget did not justify the proposed levy. City of Portsmouth, supra, at *5. That is not the case in this appeal, as the BTA noted. The only question, in the context of this case, is whether the movement of 1.25 inside mills was “clearly required” by the District’s budget.⁷ And the BTA found, as a matter of fact to which the Court defers, Olentangy Local Schools, supra, that the District’s budget “clearly

⁷ Appellants do not challenge the procedural propriety of the steps taken by the School Board.

required' specific revenue to pay for the costs of itemized improvements which were eligible for payment" by the District's permanent improvement fund. BTA Decision at 4.

Village of Waite Hill v. Budget Commission of Lake Cty., 46 Ohio St.2d 543, 350 N.E.2d 411 (1976), on which appellants also rely, is of no help to them. Waite Hill, which, like City of Portsmouth, was not an inside-millage case, involved a tax levy outside the 10-mill limitation. Id. at 544. The Lake County Budget Commission refused to approve the levy because, as a factual matter, the revenue to be raised by the levy was not required by the budget submitted by the taxing authority. Id. at 545-46. On that unremarkable basis, the BTA affirmed the budget commission and this Court affirmed the BTA. Id.

In short, Waite Hill is distinguishable on a crucial issue of fact: whether the revenue to be raised through the levy was clearly required by the taxing authority's budget. In Waite Hill, the budget commission and BTA found it was not; in this case, the Budget Commission and BTA found that it was.

Indeed, this Court distinguished both Waite Hill and Wise v. Twinsburg, 36 Ohio St.2d 114, 304 N.E.2d 390 (1973), another case cited by appellants, in its opinion in Village of South Russell. The Court distinguished those earlier cases on the basis that the budgets submitted by the taxing authorities in those cases "set forth expenditures which were less than the amounts to be generated by the levys." Village of South Russell, supra, at 131. Those cases are similarly distinguishable from this one.

It was not within the power of either the Budget Commission or the BTA to approve or disapprove the line items in the District's budget or question the need for the expenditures. And, while appellants may disagree with the School Board's view, their remedy is not through

importuning the Budget Commission or the BTA to accept their opinion over the considered judgment of the elected School Board; their remedy is through the ballot box.

Appellants also challenge the movement of inside mills on the purported grounds that it was improperly motivated by long-term fiscal considerations. That argument is also without merit. Nothing in R.C. 5705.341 prohibits the levying of funds as part of a fiscally-prudent plan, provided the levy meets other statutory requirements. That section simply requires that the “rate of taxation for the ensuing fiscal year is clearly required by a budget of the taxing district for political subdivision properly and lawfully adopted under this chapter[.]” R.C. 5705.341. That is exactly what happened here. The School Board moved the inside mills “for the ensuing fiscal year,” and, as shown above, that step was “clearly required by [the School Board’s] budget.” The School Board thus satisfied the requirements of §5705.341.

A current running below the surface of each of appellants’ arguments is an evident distaste for the whole concept of moving inside mills. See Appellants’ Brief at 1 (referring to movement of inside mills as “a public budgeting gimmick”), *passim* (repeatedly referring to movement of inside mills as an “unvoted tax increase”).

As with their disagreement over the School Board’s budget decisions, however, their philosophical objection to the movement of inside mills is not a matter for the Budget Commission or the BTA; it is a matter for the Ohio legislature and the democratic process. Cf. Merit Brief of Appellee Hamilton County Budget Commission at 5 (“If the Budget Commission’s role is to forensically examine each School Board’s budget to determine the wisdom of such budget, the Legislature needs to amend the statute to give it such authority and hopefully to grant it additional resources to do so.”). In the meantime, the School Board’s

decision was in complete harmony with Ohio law, as enacted by the duly-elected representatives of the state's taxpayers.

In summary, the School Board carefully considered the movement of the inside mills before voting unanimously to take that step. The School Board solicited public input above and beyond that required by statute and took every reasonable step to insure that taxpayers in the District were kept apprised of the School Board's deliberations. Appellants took the opportunity to voice their opposition to the movement of inside mills at each step of the process, both before the School Board and before the Budget Commission. However, the School Board unanimously rejected appellants' position, believing it not to be in the best interests of the District, and the School Board's position was vindicated by both the Budget Commission and the BTA. If this Court were now to reverse the BTA, it would not only undermine the School District's lawful decisionmaking with respect to fiscal matters, it would also invite repeated future challenges by disgruntled taxpayers who simply disagreed with their local elected officials.

The ultimate decision to move the inside mills was vetted and approved by the District's experienced bond and levy counsel. The movement of inside mills was "clearly required" by the budget submitted by the District, as the BTA correctly found. That being the case, the Budget Commission correctly approved the District's budget, including the movement of the inside mills, and the BTA correctly affirmed that decision. Village of South Russell, supra; Attorney General Opinion, supra.

CONCLUSION

For the reasons set forth above, the BTA did not err in affirming the Budget Commission's approval of the School Board's movement of 1.25 inside mills to a permanent improvement fund. The movement of those inside mills was clearly required by the budget

submitted by the School Board and met all other statutory requirements, and the BTA and Budget Commission properly refused to substitute their judgment for the School Board's in determining either the wisdom of or need for the budgeted expenditures. Any other approach would not only be contrary to Village of South Russell and the other authorities cited above, but it would also open the floodgates of appeal to every disgruntled citizen who could not find support for his or her individual opinions by way of the ballot box. The School Board and the District respectfully request that the Court affirm the decision of the BTA.

Respectfully submitted,

OF COUNSEL:

Richard T. La Jeunesse (0018175)
Matthew B. Lake (0071140) and
GRAYDON HEAD & RITCHEY LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, OH 45202-3157
Phone: (513) 621-6464
Fax: (513) 651-3836
E-Mail: mlake@graydon.com


Bruce I. Pettie, Jr. (0018179)
Harry J. Finke IV (0018160) (Counsel of
Record)
Attorneys for Indian Hill Appellees
GRAYDON HEAD & RITCHEY LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, OH 45202-3157
Direct: (513) 629-2731
Fax: (513) 381-6536
E-Mail: hfinke@graydon.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was sent by regular U.S. Mail, postage prepaid, to Maurice A. Thompson, Esq., Attorney for Appellants, 1851 Center for Constitutional Law, 208 E. State Street, Columbus, OH 43215; Thomas J. Scheve, Esq., Assistant Prosecuting Attorney, 230 E. Ninth Street, Suite 4000, Cincinnati, OH 45202; and Michael DeWine, Esq., Ohio Attorney General, 30 E. Broad Street, 17th Floor, Columbus, Ohio 43215 this 3rd day of March, 2014.


Harry J. Finke IV