

ORIGINAL

IN THE SUPREME COURT OF OHIO

TALAWANDA CITY SCHOOL
DISTRICT BOARD OF EDUCATION

CASE NO. _____

14-1798

Appellant,

vs.

ON APPEAL FROM THE OHIO
BOARD OF TAX APPEALS

OHIO DEPARTMENT OF TAXATION

and

BTA CASE NO. 2012-1224

JOSEPH W. TESTA, TAX
COMMISSIONER OF OHIO

Appellees.

NOTICE OF APPEAL OF APPELLANT
TALAWANDA CITY SCHOOL DISTRICT BOARD OF EDUCATION

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Board of Education

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COUNSEL FOR APPELLEES,
Ohio Department of Taxation and
Joseph W. Testa, Tax Commissioner of
Ohio

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OCT 17 2014
CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPEAL OF APPELLANT,
TALAWANDA CITY SCHOOL DISTRICT BOARD OF EDUCATION

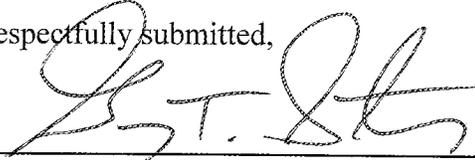
Appellant, the Talawanda City School District Board of Education (the “Board of Education”), by and through counsel, hereby gives notice of its appeal as of right, pursuant to Ohio Revised Code Section 5717.04, to the Supreme Court of Ohio, from a Decision and Order of the Board of Tax Appeals, journalized in Case No. 2012-1224 on September 26, 2014. A true copy of the Decision and 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 Decision and Order of the Board of Tax Appeals:

1. The Ohio Board of Tax Appeals erred and abused its discretion when it concluded that Section 3313.44 of the Revised Code did not exempt from real property taxation the 34 acres of parcel number H3510-038-000-012 that is leased for farming purposes.
2. The Ohio Board of Tax Appeals erred and abused its discretion when it ignored the Ohio Constitution (specifically Section 2 of Article XII) and relevant Ohio Supreme Court precedent interpreting a 1931 amendment to Section 2 of Article XII of the Ohio Constitution, and improperly imposed a specific use component to Section 3313.44 of the Revised Code that is contrary to the plain language of the statute and the holdings of this Court.
3. The Ohio Board of Tax Appeals erred and abused its discretion when it concluded that the subject property was not used for school purposes or entitled to real property tax exemption pursuant to Sections 5709.07 or 5709.08 of the Ohio Revised Code.
4. The Ohio Board of Tax Appeals erred and abused its discretion when it concluded that changes to the property that occurred in 2010 were not relevant to the instant appeal.

5. The Ohio Board of Tax Appeals erred and abused its discretion when it concluded that the Board of Education's appeal only concerned tax years 2008 through 2010.

Respectfully submitted,



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*Attorney for the Talawanda City School
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PROOF OF SERVICE UPON OHIO BOARD OF TAX APPEALS

I certify that a true and accurate copy of the foregoing Notice of Appeal of Appellant Talawanda City School District Board of Education was filed with the Ohio Board of Tax Appeals, State Office Tower, 30 East Broad Street, 24th Floor, Columbus, Ohio 43215 as evidenced by the date stamp set forth hereon.



Gary T. Stedronsky (0079866)

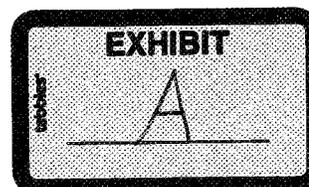
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served by certified mail to: **David D. Ebersole**, 30 East Broad Street, 25th Floor, Columbus, OH 43215 on this the 17th day of October, 2014.



Gary T. Stedronsky (0079866)

OHIO BOARD OF TAX APPEALS



TALAWANDA CITY SCHOOL DISTRICT
BOARD OF EDUCATION, (et. al.),
Appellant(s),
vs.
JOSEPH W. TESTA, TAX COMMISSIONER OF
OHIO, (et. al.),
Appellee(s).

CASE NO(S). 2012-1224

(EXEMPTION)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s)

- TALAWANDA CITY SCHOOL DISTRICT
BOARD OF EDUCATION
Represented by:
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1714 WEST GALBRAITH ROAD
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For the Appellee(s)

- JOSEPH W. TESTA, TAX COMMISSIONER OF
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Represented by:
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COLUMBUS, OH 43215

Entered Friday, September 26, 2014

Mr. Williamson, Mr. Johrendt, and Mr. Harbarger concur.

Appellant appeals from a final determination of the Tax Commissioner, in which he denied exemption of approximately 34 acres of certain real property, i.e., parcel number H3510-038-000-0012, located in Butler County, Ohio, for tax year 2010, and remitted penalties charged against the unexempted portion of the parcel for tax years 2008 and 2009. This matter is now considered upon the notice of appeal, the statutory transcript certified by the commissioner, the record of this board's hearing, and the parties' briefs.

The subject property consists of approximately 34 acres that are part of a larger parcel acquired by the appellant in 2009 to build a new high school. The seller was permitted to remain on a portion of the land, though appellant exercised an early termination clause that required him to vacate the property in September 2009 so that construction could begin. In order to avoid the cost to maintain the portion of the property at issue in the instant appeal, the 34 acres were leased to a local farmer at an annual rate of \$65 per acre. This lease was terminated early and appellant entered into a new lease with Adam Smith, allowing him to farm a 17-acre portion of the subject property, on which he farms soybeans and corn.

The portion of the 34 acres not being farmed by Mr. Smith was restored to its natural state and functions as a nature preserve. As part of Mr. Smith's lease, he is required to maintain trails that were created around the farm and through the preserve area. These trails provide access for students from the high school and nearby Miami University to study the plants and trees along the trails.

Appellant applied for exemption from real property exemption under R.C. 3313.44, which provides that "[r]eal or personal property owned by or leased to any board of education for a lease term of at least fifty years shall be exempt from taxation." The commissioner granted exemption for the portion of the property used for the school and grounds, but determined that the 34 acres leased for farming purposes should remain on the tax list. Appellant asserts that the Tax Commissioner improperly imposed a specific use component to the statute that does not comport with its plain language.

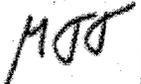
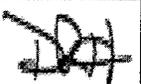
The findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. Consequently, it is incumbent upon a taxpayer challenging a determination of the commissioner to rebut the presumption and to establish a clear right to the requested relief. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. In this regard, the taxpayer is assigned the burden of showing in what manner and to what extent the commissioner's determination is in error. *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213.

This board has previously considered whether land owned by a school board but leased for farming qualifies for exempt status. See *London City Schools Board of Education v. Zaino* (Jan. 12, 2001), 2000-B-1478, unreported. After a review of relevant Supreme Court precedent as well as this board's previous decisions on the issue, we held that "not only must title to a subject property be vested in a school board, but also that the property be used for school purposes." *Id.* at 9. Thus, we reject appellant's argument against application of the use requirement and consider whether the subject property was used for school purposes.

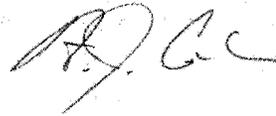
In the instant appeal, there is no dispute as to the ownership of the subject property. Thus, we look to the use of the property to determine whether it should be granted an exemption. The record shows that in 2009 and up until some point in 2010, 34 acres were leased to a farmer for the cultivation of corn and soybeans. Although appellant asserts that it leased this property to avoid the cost of maintenance and not for the rental income, the ultimate user of the property, the farmer, presumably did so intending to earn a profit. We note that the changes that took place in 2010, i.e., the restoration of a portion of the area to a nature preserve and the addition of the trails, changed the use of a portion of the property such that only 17 acres were farmed commercially. As these changes took place after the 2010 tax lien date, they are not relevant to the instant appeal, which only concerns tax years 2008 through 2010.

Based upon the foregoing, we find that the commissioner's determination was reasonable and lawful. Accordingly, the final determination must be, and hereby is, affirmed.

BOARD OF TAX APPEALS

RESULT OF VOTE	YES	NO
Mr. Williamson		
Mr. Johrendt		
Mr. Harbarger		

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.J. Groeber, Board Secretary