

IN THE SUPREME COURT OF OHIO

Board of Education of the Columbus City School District,	:	
Appellant,	:	Case No. 2014-721
v.	:	
Franklin County Board of Revision, Franklin County Auditor, and Donald W. Beck,	:	Appeal from Ohio Board of Tax Appeal - Case Nos. 2013-4176, 2013-4177 and 2013-4178
Appellees.	:	

MOTION FOR RECONSIDERATION OF APPELLANT

Now comes Appellant Board of Education of the Columbus City School District and requests that the Supreme Court of Ohio reconsider its decision issued November 25, 2015 in the above-styled case. In summary, the reason for the request is that the Court's ruling that the BOE waived its claim of error when it presented neither argument nor evidence before the BTA fails to take into consideration that the BOE requested but was denied the opportunity to present its legal arguments before the BTA.

This case was scheduled for an evidentiary hearing before the Board of Tax Appeals on March 5, 2014. On October 20, 2013, the property owner waived his appearance at this hearing. (Attachment 1). On March 3, 2014, the BOE likewise waived its appearance at the Board's scheduled hearing. In addition, the BOE filed a motion requesting that a briefing schedule be assigned in this case. (Attachment 2). During the period in question, it was common practice for parties to waive appearance at the BTA hearing if they did not have additional evidence to present in order to avoid the cost associated with the hearing. Parties often requested briefing

schedules in these instances, and such requests were routinely granted by the BTA. While the BOE's Waiver of Hearing and Request for a Briefing Schedule was filed March 3, 2014, it was not docketed by the Board of Tax Appeal until March 5, 2014. On March 4, 2015, the County Appellee's representative also waived his appearance at the BTA hearing.

Despite the fact that all parties waived hearing prior to commencement of the March 5, 2015 hearing (Attachment 3 – screen shot of Board of Tax Appeals timeline), the Board of Tax Appeals none-the-less convened a hearing, noting that none of the parties were in attendance. However, the paralegal conducting the hearing failed to acknowledge the parties waivers and the BOE's request for a briefing schedule.

On April 10, 2014, while the BOE's request for a briefing schedule was still pending, the BTA issued its decision herein. In its decision, the BTA failed to acknowledge the BOE's outstanding request for the opportunity to submit its legal arguments or to explain its reason for departing from past precedent of routinely granting such motions.¹ A review of the transcript certified by the BTA reveals that none of the documentation relating to the parties waiver of hearing or the BOE's request for a briefing schedule was included in the transcript certified by the BTA.

In rendering its decision herein, the Court cites *MacConnell v. Ohio Dept. of Commerce*, 10th Dist. Franklin No. 04AP-433, 2005-Ohio-1960. However, in *MacConnell*, the Tenth District Court of Appeals relied upon the fact that the appellant could have raised the issue but did not. Therein, the Court held:

¹ This case was filed Sept. 6, 2012. The BTA rules in effect at that time did not specify a mandatory time frame for submitting legal arguments. Briefing schedules were set by attorney examiners on a case-by-case basis. The BTA's rules were subsequently amended, effective for cases filed after October 9, 2013. Pursuant to the new rules, legal arguments are to be submitted 210 days after the filing of the notice of appeal. See Ohio Admin. Code 5717-1-06. However, these amended rules are inapplicable herein.

We begin by noting appellant did not raise any procedural or evidentiary objections at the administrative level. Generally, a party waives the right to appeal an issue that could have been but was not raised in earlier proceedings. *Am. Legion Post 200 v. Ohio Liquor Control Comm'n*, Franklin App. No. 01AP-684, 2001 Ohio 8776, 2001 Ohio App. LEXIS 5714 at *4; *Little Forest Med. Ctr. of Akron v. Ohio Civ. Rights Comm.* (1993), 91 Ohio App.3d 76, 80, 631 N.E.2d 1068. This principle has been applied in appeals from administrative agencies. See *Loyal Order of Moose Lodge No. 1473 v. Ohio Liquor Control Comm.* (1994), 95 Ohio App.3d 109, 114, 641 N.E.2d 1182; *Tomajaber, Inc. v. Ohio Liquor Control Comm'n* (Sept. 21, 1994), Summitt App. No. CA-16359, 1994 Ohio App. LEXIS 4232. Because appellant did not raise any objections at the hearing to the proceedings or evidence presented, the division asserts he waived them on appeal. We agree.

In this case, the BOE requested the opportunity to submit its legal arguments to the BTA. Instead, the BTA chose to ignore the BOE's request and decide this case on the record. Accordingly, the BOE was never provided the opportunity to present its legal arguments. Clearly a party cannot waive an argument if it was never given the opportunity to submit the argument. The BOE respectfully requests that this Court reconsider its ruling that the BOE waived its claim of error by not presenting it to the BTA, since the BOE was not provided the opportunity to presents legal arguments to the BTA.

CONCLUSION

For the reasons set forth herein, the Board of Education of the Columbus City School District respectfully requests this Court to reconsider its decision that the BOE waived its legal arguments in this case and either consider the BOE's legal arguments and reverse the decision of the Board of Tax Appeals and reinstate the Franklin County Auditor's original appraised value of the three properties involved herein, or in the alternative remand this matter to the BTA with

instructions to assign a briefing schedule so that the BOE may present its legal arguments to the BTA.

Respectfully Submitted,

/s/ Kimberly G. Allison

Kimberly G. Allison (0061612)
Rich & Gillis Law Group, LLC
6400 Riverside Drive, Suite D
Dublin, OH 43017
PH: (614) 228-5822
FAX: (614) 540-7476

Attorneys for Appellant
Board of Education of the Columbus City
School District

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing merit brief was served on the following via certified mail this 7th day of December, 2015:

Donald Beck
1782 Ferris Road
Columbus, Ohio 43224

Appellee

William J. Stehle
Assistant County Prosecutor
373 South High Street, 20th Floor
Columbus, Ohio 43215
wstehle@franklincountyohio.gov

Attorney for County Appellees

The Honorable Mike DeWine
Ohio Attorney General
30 East Broad Street, 17th Floor
Columbus, OH 43215
Christine.Mesirow@OhioAttorneyGeneral.gov
Attorney for Ohio Tax Commissioner

/s/ Kimberly G. Allison
Kimberly G. Allison (0061612)

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MOTION FOR RECONSIDERATION OF APPELLANT

Kimberly G. Allison (0061612)
Rich & Gillis Law Group, LLC
6400 Riverside Drive, Suite D
Dublin, OH 43017
(614) 228-5822
Fax: (614) 540-7474
kallison@richgillislawgroup.com

Donald W. Beck
1782 Ferris Road
Columbus, Ohio 43224
(614) 263-8551

Appellee

Attorney for Appellant
Board of Education of the Columbus
City School District

Mike Dewine (0009181)
Ohio Attorney General
30 East Broad Street, 17th Floor
Columbus, OH 43215

Ron O'Brien (0017245)
Franklin County Prosecuting Attorney
William J. Stehle
Assistant Prosecuting Attorney
373 South High Street, 20th Floor
Columbus, Ohio 43215

Attorney for Ohio Tax Commissioner

Attorneys for Appellees County Auditor
And Board of Revision

October 20, 2013

Ohio Board of Tax Appeals
30 East Broad Street
Columbus, OH 43215-3414

In Re: Board of Education of the Columbus City Schools vs. Franklin
County Board of Revision, Et. Al.

BTA Case No. 2013-4176
Lower Case No: 10-009886

TO WHOM IT MAY CONCERN:

Please be advised that I do not intend to submit new evidence or testimony
in this case and therefore do not require a hearing.

While I do not agree with the proposed changes, due to health and financial
concerns, I am choosing not to contest the proposed change.

Sincerely,



Donald W. Beck
1782 Ferris Road
Columbus, OH 43224

C: Franklin County Auditor
Franklin County Pros. Attorney
Columbus City Board of Education
Mark Gillis, Esquire

Attachment 1

**BOARD OF TAX APPEALS
STATE OF OHIO**

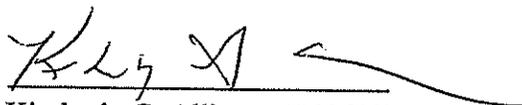
Board of Education of the Columbus City School District,	:	
	:	
Appellant,	:	Case Nos. 2013-4176, 2013-4177
	:	2013-4178
v.	:	
	:	
Franklin County Board of Revision, et al.	:	
	:	
Appellees.	:	

**APPELLANT BOARD OF EDUCATION OF THE COLUMBUS CITY SCHOOL
DISTRICT'S WAIVER OF HEARING AND REQUEST FOR BRIEFING SCHEDULE**

Now comes Appellant Board of Education of the Columbus City School District ("BOE") and hereby waives its appearance at the merit hearing currently scheduled in this case for March 5, 2014. The property owner has also waived appearance at this hearing (See attached waivers). The BOE further requests that a briefing schedule be assigned in this matter.

Respectfully submitted,

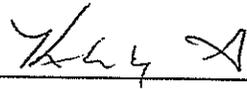
RICH & GILLIS LAW GROUP, LLC



Kimberly G. Allison (0061612)
6400 Riverside Drive, Suite D
Dublin, Ohio 43017
(614) 228-5822; (614) 540-5476
Attorney for Appellee Board of Education of the
Columbus City School District

CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing was served, by regular U.S. Mail, postage prepaid, upon Donald Beck, 1782 Ferris Road, Columbus, Ohio 43224 and William Stehle, Assistant Prosecuting Attorney, 373 South High Street, 20th Floor, Columbus, Ohio 43215, this 3rd day of March, 2014.



Kimberly G. Allison (0061612)

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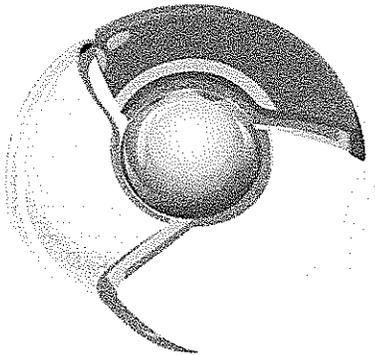
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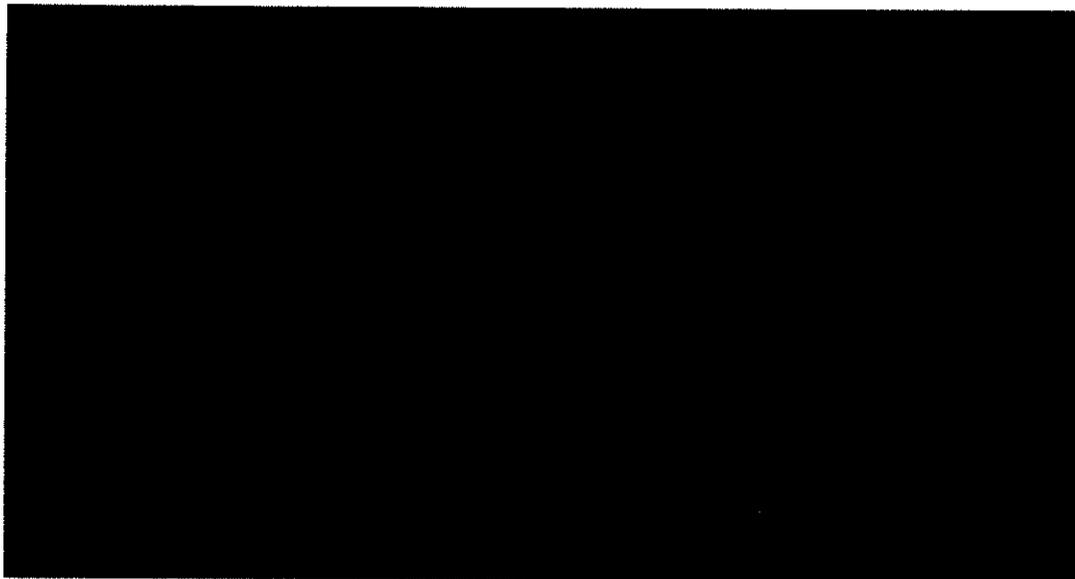
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Appeal Year: 2013 | Appeal Number: 4176 | Case Name: BOARD OF EDUCATION OF THE COLUMBUS CITY SCHOOLS VS. FRANKLIN COUNTY BOARD OF REVISION

Consolidated:

Stand Alone

Phase:

Stay

Stage:

Stayed (Higher Court Appeal)

This appeal is stayed pending the outcome of the appeal at a higher court.

Party Details

Appellant (s)

1 . BOARD OF EDUCATION OF THE COLUMBUS CITY SCHOOLS

Representative: MARK H. GILLIS,
RICH & GILLIS LAW GROUP, LLC

Appellee (s)

1 . FRANKLIN COUNTY BOARD OF REVISION

Representative: RON O'BRIEN,
FRANKLIN COUNTY

2. DONALD W BECK

Representative: DONALD BECK

Filing Date

:
06-Sep-2013

Appealed Decision Type

:
Board of Revision

Active / Inactive

:
Inactive

- [Tasks \(0\)](#)
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Timeline

10-Jun-2014 01:44PM **Tonisha Gibson** has completed **StayAppeal** - Appeal Stayed: Higher Court Appeal #Schedule



14-Mar-2014 12:00AM **DataMigration User** has completed **PriorCMS** - HEARINGS FILED 3/14/2014 E-DOC



11-Mar-2014 12:00AM **DataMigration User** has completed **PriorCMS** - STANDARD DECISION DVF BOARD DATE 4/10/2014 VALUE FOUND



05-Mar-2014 12:00AM **DataMigration User** has completed **PriorCMS** - WAIVER OF APPEARANCE AT HEARING K. ALLISON NOTIFIED 3/5/2014



05-Mar-2014 12:00AM **DataMigration User** has completed **PriorCMS** - ANT WAIVER AND REQUEST FOR BRIEFING SCHEDULE SENT BY K.ALLISON E-DOC FILED 3/5/2014



04-Mar-2014 12:00AM **DataMigration User** has completed **PriorCMS - BOR WAIVER E-DOC FILED 3/4/2014**



24-Oct-2013 12:00AM **DataMigration User** has completed **PriorCMS - WAIVER OF HEARING FILED BY AEE-DONALD BECK FILED 10/23/2013**



21-Oct-2013 12:00AM **DataMigration User** has completed **PriorCMS - LTR RE TRANSCRIPT WILL BE FORTH COMING SENT BY BOR FILED 10/11/2013**



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10-Sep-2013 12:00AM **DataMigration User** has completed **PriorCMS - NOTICE OF APPEAL 09/06/2013**



10-Sep-2013 12:00AM **DataMigration User** has completed **PriorCMS - HEARING SCHEDULED 3/5/2014 ROOM X TIME 9:00 AM MERIT HEARING**



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