IN THE SUPREME COURT OF OHIO

City of Elyria, Ohio, City of Avon Lake, Ohio, City of North Ridgeville, Ohio and Amherst Township, Ohio	:	**06-2390**
Appellants,	:	Appeal from the Ohio Board of Tax Appeals
v.	:	
William W. Wilkins Tax Commissioner of Ohio	:	Board of Tax Appeals Case No. 2005-T-1301

Penfield Township

Pittsfield Township

Rochester Township

Sheffield Township

Wellington Township

City of Sheffield Lake

Village of LaGrange

Kipton Village

Brownhelm Township

Grafton Township

Wellington Village

Henrietta Township

Elyria Township

New Russia Township

Huntington Township

Eaton Township

Lorain County Metropolitan Park District

City of Vermilion

City of Amherst

City of Oberlin

Grafton Village

City of Avon

City of Lorain

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MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

South Amherst Village

Columbia Township

LaGrange Township

Lorain County, Ohio

Sheffield Village

Camden Township

Brighton Township

Rochester Village

Carlisle Township

Lorain County Budget Commission

Board of County Commissioners of
Lorain County, Ohio

Appellees.

NOTICE OF APPEAL OF APPELLANTS CITY OF ELYRIA, OHIO, CITY OF AVON LAKE, OHIO, CITY OF NORTH RIDGEVILLE, OHIO AND AMHERST TOWNSHIP, OHIO

Terry S. Shilling (#0018763)
Law Director, City of Elyria
131 Court Street, #201
Elyria, Ohio 44035
(440) 326-1464
Fax No. (440) 326-1466
tshilling@cityofelyria.org
COUNSEL FOR APPELLANTS CITY OF ELYRIA, OHIO AND AMHERST TOWNSHIP

Geoffrey R. Smith (#0008772)
124 Middle Avenue, Suite 800
Elyria, Ohio 44035
(440) 323-2201
Fax No. (440) 323-2332
grsmith@geoffreyrsmith.com
COUNSEL FOR APPELLANT CITY OF AVON LAKE, OHIO

Eric H. Zagrans (#0013108)
474 Overbrook Road
Elyria, Ohio 44035
(440) 452-7100
eric@zagrans.com
COUNSEL FOR APPELLANT CITY OF NORTH RIDGEVILLE, OHIO

Jim Petro
Attorney General of Ohio
Attn: John K. McManus
Senior Deputy Attorney General
Office of Attorney General

State Office Tower
30 East Broad Street, 16th Floor
Columbus, Ohio 43210
Phone: (614) 466-5967
Fax No.
Email
COUNSEL FOR APPELLEE
WILLIAM W. WILKINS, TAX COMMISSIONER OF OHIO

Notice of Appeal of Appellants City of Elyria, Ohio,
City of Avon Lake, Ohio, City of North Ridgeville, Ohio and Amherst Township, Ohio

Appellants, City of Elyria, Ohio, City of Avon Lake, Ohio, City of North Ridgeville, Ohio and Amherst Township, Ohio hereby give notice of their appeal as of right, pursuant to R.C. 5717.04, to the Supreme Court of Ohio, from a Decision and Order of the Board of Tax Appeals, journalized in Case No. 2005-T-1301 on December 1, 2006. A true copy of the Decision and Order of the board being appealed is attached hereto and incorporated herein by reference.

The appellants complain of the following errors in the Decision and Order of the Board of Tax Appeals:

1) The Board of Tax Appeals erred in determining that Appellant did not have subject matter jurisdiction.

A. Appellants met the requirements of RC Section 5747.55 (C)(3). RC 5747.55 (C)(3) requires that Appellants set forth which subdivision they "believe" to be over allocated and the exact amount in dollars of the "alleged" amount of the over allocation. Appellants satisfied this requirement by setting forth the subdivision it "believed" to be over allocated and the "alleged" amount. (Emphasis added).

B. Even if Appellees are correct and Appellants somehow violated RC 5747.55 (C)(3), it was a curable defect that Appellants should have been granted leave to amend. Said issue should not be raised approximately three years after said Notice of Appeal was filed.

2) The Board of Tax Appeals erred in substituting *its* determination of the subdivisions which *the Board* believes received more than its proper share of the

allocation and the exact amount in dollars of such alleged over allocation. The Board of Tax Appeals determined *after the fact* what the alleged over allocation should be, in violation of the requirement that the Appellants set forth those political subdivisions which *Appellants* believed received more than its proper share, thereby, in effect, ignoring the requirement that the Appellants only have to have a "belief" of those subdivisions that are over allocated and there is no requirement that in its Notice of Appeal the complaining subdivisions "belief" has to be correct.

3) The Board of Tax Appeals erred in determining that the Appellants' Notice of Appeal was only under ORC 5747.55 (C) and not also under ORC 5747.55 (D) and erred in not taking into consideration the requirements of 5747.55 (D) and the effect of the violation of that section on the Appellants as a result of the implementation of a settlement by the Lorain County Budget Commission of BTA Case No. 2002-T-1865 (City of Lorain vs. Lorain County Budget Commission).

4) The Board of Tax Appeals erred in making subsequent findings of fact and determinations of law to determine that the Appellants did not properly invoke the subject matter jurisdiction of the Board of Tax Appeals in this case.

5) The Board of Tax Appeals erred by using all of the factual discovery and evidence presented in the hearing and briefing in BTA Case No. 2003-T-1533 in making its determination of the lack of subject matter jurisdiction, instead of looking at the Notice of Appeal on its face and making its decision on a procedural basis and not a substantive basis.

6) The Board of Tax Appeals improperly dismissed BTA Case No. 2005-T-1301 and such decision of the dismissal was not supported under the law and the facts as

evidenced in the record of BTA Case No. 2005-T-1301, and thus, the decision of the Board of Tax Appeals in Case No. 2005-T-1301 was not reasonable nor lawful.

7) The Board of Tax Appeals erred in concluding that the Appellants failed to list the exact amounts of the over allocation and failed to identify the claimed over allocated subdivisions.

8) The Board of Tax Appeals erred in not concluding that what the Appellants sought in the Notice of Appeal and their appeal were alternative forms of relief, to wit: the violation of ORC 5747.55 (D), and not only one form of relief, to wit: that the County of Lorain bear the burden of the decision of the Lorain County Budget Commission which was appealed in BTA Case No. 2005-T-1301.

9) The Board of Tax Appeals erred in waiting until after the case was submitted on the record and utilizing an issue raised in a reply brief in determining that the Appellants had not properly invoked the subject matter jurisdiction of the Board of Tax Appeals.

10) The Board of Tax Appeals erred by allowing the City of Lorain to raise the lack of subject matter jurisdiction in the City of Lorain's post hearing Reply Brief in BTA Case No. 2003-T-1533 after a substantial amount of litigation including discovery and a hearing and briefing and substantial litigation costs were incurred in processing the appeal by the Appellants and the Appellees.

11) The Board of Tax Appeals erred by making a determination that the Appellants did not properly invoke the subject matter jurisdiction of the Board of Tax Appeals without there being before the Board of Tax Appeals any proper Motion to Dismiss on the grounds that the Appellants' Notice of Appeal failed to satisfy mandatory requirements of ORC 5747.55.

12) The Board of Tax Appeals erred in its determination that the Appellants did not comply with the requirements of ORC 5747.55 (C)(3) and ORC 5747.55.

13) The Board of Tax Appeals erred in its determination that the word "believe" in ORC 5747.55 (C)(3) is mandatory and exact and not an estimate or a probability and, therefore, erred in not allowing for the flexibility that is inherent in the word "believe". "Believe" goes to the question of good faith of the Appellants in their allegations in their Notice of Appeal. The word "belief" connotes some room for probability and the Board erred in determining that its an exact requirement. The word "alleged" is not an exact word, it's setting forth in good faith a statement which the maker (Appellants) believe to be true which may ultimately, based upon the evidence, be determined not to be true and, therefore, it is a question for determination of facts and not a question of jurisdiction in determining the merits of the case and the Board of Tax Appeals erred in this case in making that determination and their decision on December 1, 2006.

14) The Board of Tax Appeals erred in its decision denying subject matter jurisdiction by using a hyper technical standard that is not reasonable nor lawful and, thus, denied the Appellants their right to due process of the law in Ohio under ORC 5747.55 (D).

15) The Board of Tax Appeals erred in its decision by not taking into consideration the position and allegations of the Appellants that the Appellants' Notice of Appeal was also based on the abuse of discretion of the Lorain County Budget Commission and that, as an alternative form of relief, the Appellants' Notice of Appeal was under ORC Sections 5705.37, 5747.53 and 5747.63.

16) The Board of Tax Appeals erred in its determination that the Appellants made a deliberate decision to exclude the City of Lorain as an over allocated subdivision as it relates to the application of ORC Sections 5747.55 (D), 5705.37, 5747.53 and 5747.63.

17) The Board of Tax Appeals erred in not recognizing that since the Appellants were not parties to BTA Case No. 02-T-1865, under ORC 5747.55 (D) each Appellant's under allocation of the 2006 LGF and RAF, as stated in the Appellants' Notice of Appeal at Exhibits G and H, was an exact amount that could only be re-allocated to the Appellants from the total 2006 over allocation to the Appellees which exact amount is shown on Exhibits G and H.

18) The Board of Tax Appeals erred in making its decision to dismiss Appellants' Notice of Appeal under ORC 5747.55 (C)(3) without taking into consideration ORC Sections 5705.37, 5747.53, 5747.55 (D) and 5747.63.

Respectfully submitted,

By: _____
Terry S. Shilling, Counsel of Record
COUNSEL FOR APPELLANTS,
CITY OF ELYRIA, OHIO AND
AMHERST TOWNSHIP, OHIO
131 Court Street
Elyria, Ohio 44035
Atty. Reg. No. 0018763

_____
Geoffrey R. Smith, Counsel of Record
COUNSEL FOR APPELLANT, CITY OF
AVON LAKE, OHIO
150 Avon Belden Road
Avon Lake, Ohio 44012
Atty. Reg. No. 0008772

_____
Eric H. Zagrans, Counsel of Record
COUNSEL FOR APPELLANT, CITY OF
NORTH RIDGEVILLE, OHIO
7307 Avon Belden Road
North Ridgeville, Ohio 44039
Atty. Reg. No. 0013108

CERTIFICATE OF SERVICE

We hereby certify that a copy of this Notice of Appeal was sent by certified mail to Counsel for Appellees and to all Appellees as herein listed on the 28th day of December, 2006:

Penfield Township
Eleanor Gnandt, Clerk of Council
42760 Peck Wadsworth Road
Wellington, Ohio 44090

Pittsfield Township
James R. McConnell, Clerk of Council
17567 Hallauer Road
Wellington, Ohio 44090

Rochester Township
Laura Brady, Clerk of Council/Clerk
52185 Griggs Road
Wellington, Ohio 44090

Sheffield Township
Patricia Echko, Clerk
5166 Clinton Avenue
Lorain, Ohio 44055

Wellington Township
Bernie Nirode, Clerk of Council/Clerk
44627 State Route 18
Wellington, Ohio 44090

John T. Sunderland
John B. Kopf
Thompson Hine LLP
Counsel for Lorain County and
Lorain County Commissioners
10 West Broad St., Ste. 700
Columbus, Ohio 43215-3435

James E. Hoenig, Treasurer
City of Sheffield Lake
609 Harris Road
Sheffield Lake, Ohio 44054

John R. Varanese
Counsel for City of Lorain

Lawrence Rush
Finance Director
City of Vermilion
5511 Liberty Avenue
Vermilion, Ohio 44089

Kenneth S. Stumphauzer
Law Director, City of Amherst
5455 Detroit Road
Sheffield Village, Ohio 44054

Eric R. Severs, Solicitor
City of Oberlin
5 South Main Street
Oberlin, Ohio 44075

Linda S. Bales, Clerk
Grafton Village
960 Main Street
Grafton, Ohio 44044

Dennis Will, Lorain County
Prosecuting Attorney
Gerald A. Innes, Assistant
Lorain County Prosecuting Attorney
Counsel for Lorain County Budget
Commission
Lorain County Justice Center
225 Court St., 3rd Floor
Elyria, Ohio 44035

John A. Gasior, Law Director
City of Avon
36815 Detroit Road
Avon, Ohio 44011

Rita K. Ruot, Clerk Treasurer
Village of LaGrange
P. O. Box 597
LaGrange, Ohio 44050

Janice J. Szmania, Clerk
South Amherst Village

85 E. Gay Street, Suite 1000
Columbus, Ohio 43215-3118

Albert Buck, Jr., Clerk
Kipton Village
42 Court
Kipton, Ohio 44049

Marsha Funk, Clerk
Brownhelm Township
1325 Highbridge Road
Vermilion, Ohio 44089

Mary Rose Dangelo, Clerk
Grafton Township
18789 Avon Wooster Road
Grafton, Ohio 44044

Timothy J. Pelcic, Clerk-Treasurer
Sheffield Village
5290 Kevin Street
Sheffield, Ohio 44054

Francis J. Knoble, Clerk
Henrietta Township
10413 Vermilion Road
Oberlin, Ohio 44074

Barbara Baker, Clerk
Elyria Township
41835 Earlene Court
Elyria, Ohio 44035

Elaine R. King, Clerk
New Russia Township
44143 Russia Road
Elyria, Ohio 44035

Margaret Harris, Clerk
Huntington Township
26309 State Route 58
Wellington, Ohio 44090

Linda Spitzer, Clerk
Eaton Township
12335 Grafton Road

103 West Main St.
South Amherst, Ohio 44011

Mary Lou Berger, Clerk
Columbia Township
27753 Ann Road
Columbia Station, Ohio 44028

Roberta M. Dove, Clerk
LaGrange Township
237 Forest St.
LaGrange, Ohio 44050

Karen J. Webb, Clerk
Wellington Village
159 East Street
Wellington, Ohio 44090

City of Avon
Robert Hamilton, Finance Director
36080 Chester Road
Avon, Ohio 44011

Cheryl Parrish, Clerk
Camden Township
15374 Baird Road
Oberlin, Ohio 44074

Marilyn McClellan, Clerk
Brighton Township
19996 Baird Road
Wellington, Ohio 44090

Laura Brady, Clerk
Rochester Village
52185 Griggs Road
Wellington, Ohio 44090

Barbara VanMeter, Clerk
Carlisle Township
40835 Banks Road
LaGrange, Ohio 44050

Mark R. Stewart
Lorain County Auditor

Grafton, Ohio 44044

Member and Secretary, Lorain
County Budget Commission
226 Middle Avenue
Elyria, Ohio 44035

David C. Kukucka, Auditor
City of Amherst
480 Park Avenue
Amherst, Ohio 44001

Ron L. Mantini, Auditor
City of Lorain
200 West Erie Avenue, 6th Floor
Lorain, Ohio 44052-1647

Lorain County, Ohio
Attn: James Cordes
226 Middle Avenue
Elyria, Ohio 44035

Board of County Commissioners
Of Lorain County, Ohio
225 Middle Avenue
Elyria, Ohio 44035

Lorain County Metropolitan Park
Denise Gfell, Treasurer
12882 Diagonal Road
LaGrange, Ohio 44050

Paul D. Eklund
Counsel for Lorain County
Metropolitan Parks
Davis & Young
1700 Midland Building
101 Prospect Avenue, West
Cleveland, Ohio 44115

City of Oberlin
Salvatore Talarico, City Auditor
69 S. Main Street
Oberlin, Ohio 44074

Terry S. Shilling, Counsel of Record,
Counsel for Appellants, City of
Elyria, Ohio and Amherst Township,
Ohio

Geoffrey R. Smith, Counsel of
Record, for Appellant, City of Avon
Lake, Ohio

Eric Zagrans, Counsel of Record for
Appellant, City of North Ridgeville,
Ohio

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OHIO BOARD OF TAX APPEALS

City of Elyria, City of Avon Lake, City of North Ridgeville, Amherst Township, and Lorain County Metropolitan Park District,	)	CASE NO. 2005-T-1301
Appellants	)	(BUDGET COMMISSION: ULGF and ULGRAF)
vs.	)	DECISION AND ORDER
Lorain County Budget Commission, et al.,	)	
Appellees.	)	

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LAW DIRECTOR'S OFFICE

APPEARANCES:

For the City of Elyria and Amherst Twp. -
Terry S. Shilling
Law Director, City of Elyria
328 Broad Street
Elyria, Ohio 44035

For City of N. Ridgeville –
Eric H. Zagrans
Attorney at Law
1401 Eye Street, NW
7th Floor
Washington, DC 20005

For City of Avon –
Geoffrey R. Smith
Law Director, City of Avon Lake
150 Avon Beldon Road
Avon Lake, Ohio 44012

Copy to -
John Koval
Clerk, Amherst Township
7530 Oberlin Road
Elyria, Ohio 44035

For Lorain Cty. Metro Parks -
Davis & Young
Paul D. Eklund
1700 Midland Building
101 Prospect Avenue, West
Cleveland, Ohio 44115

For the Budget Comm. -
Dennis Will
Lorain Cty. Prosecuting Attorney
Gerald A. Innes
Assistant Prosecuting Attorney
226 Middle Avenue
3rd Floor
Elyria, Ohio 44035

For Lorain Cty. and Lorain County Commissioners -
Thompson Hine LLP
John T. Sunderland
10 West Broad Street
Suite 700
Columbus, Ohio 43215

Kenneth S. Stumphauzer
Law Director, City of Amherst
Abraham Lieberman
Assistant Law Director
5455 Detroit Road
Sheffield Village, Ohio 44054

John A. Gasior
Law Director, City of Avon
36815 Detroit Road
Avon, Ohio 44011

For the City of Lorain -
John R. Varanese
85 East Gay Street
Suite 1000
Columbus, Ohio 43215-3118

Eric R. Severs
Oberlin City Solicitor
5 South Main Street
Oberlin, Ohio 44074

Stanley Zaborski
Treasurer, City of Sheffield Lake
609 Harris Road
Sheffield Lake, Ohio 44054

Lawrence Rush
Finance Dir., City of Vermilion
5511 Liberty Avenue
Vermilion, Ohio 44089

Albert Buck, Jr.
Clerk, Kipton Village
42 Court
Kipton, Ohio 44049

Janice J. Szmania
Clerk, South Amherst Village
103 West Main Street
South Amherst, Ohio 44011

Marsha Fink
Clerk, Brownhelm Township
1940 North Ridge Road
Vermilion, Ohio 44089

Mary Lou Berger
Clerk, Columbia Township
25496 Royalton Road
P.O. Box 819
Columbia Station, Ohio 44028

Mary Rose Dangelo
Clerk, Grafton Township
18789 Avon Wooster Road
Grafton, Ohio 44044

Roberta M. Dove
Clerk, LaGrange Township
P.O. Box 565
LaGrange, Ohio 44050

James R. McConnell
Clerk, Pittsfield Township
17567 Hallauer Road
Wellington, Ohio 44090

Bernie Nirode
Clerk, Wellington Township
44627 State Route 18
Wellington, Ohio 44090

Linda S. Bales
Clerk, Grafton Village
960 Main Street
Grafton, Ohio 44044

Laura Brady
Clerk, Rochester Village
52185 Griggs Road
Wellington, Ohio 44090

Karen J. Webb
Clerk, Wellington Village
Willard Memorial Square
Wellington, Ohio 44090

Cheryl Parrish
Clerk, Camden Township
15374 Baird Road
Oberlin, Ohio 44074-9696

Linda Spitzer
Clerk, Eaton Township
12043 Avon Beldon Road
Grafton, Ohio 44044

Francis J. Knoble
Clerk, Henrietta Township
10413 Vermilion Road
Oberlin, Ohio 44074

Elaine R. King
Clerk, New Russia Township
46268 Butternut Ridge Road
Oberlin, Ohio 44074

Laura Brady
Clerk, Rochester Township
52185 Griggs Road
Wellington, Ohio 44090

Mark R. Stewart
Lorain County Auditor
226 Middle Avenue
2nd Floor
Elyria, Ohio 44035-5640

Rite K. Ruot
Clerk-Treasurer, LaGrange Village
P.O. Box 597
LaGrange, Ohio 44050

Timothy J. Pelcic
Clerk-Treasurer, Sheffield Village
4820 Detroit Road
Elyria, Ohio 44035

Marilyn McClellan
Clerk, Brighton Township
19996 Baird Road
Wellington, Ohio 44090

Barbara VanMeter
Clerk, Carlisle Township
11969 LaGrange Road
LaGrange, Ohio 44050

Barbara Baker
Clerk, Elyria Township
41416 Griswold Road
Elyria, Ohio 44035

Margaret Harris
Clerk, Huntington Township
26309 State Route 58
Wellington, Ohio 44090

Eleanor Gnandt
Clerk, Penfield Township
42760 Peck Wadsworth Road
Wellington, Ohio 44090

Angelo J. Marotta
Clerk, Sheffield Township
5166 Clinton Avenue
Lorain, Ohio 44055

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

Recently, in *City of Elyria v. Lorain Cty. Budget Comm.* (Nov. 17, 2006), BTA No. 2003-T-1533, unreported, we dismissed an appeal from the actions of a budget commission because we found that the appellants failed to comply with the mandatory requirements of R.C. 5747.55(C)(3).[1] The appellants identified only those subdivisions from which they sought to recover their share of the funds, not those subdivisions they believed to be overallocated. We found that this defect in the notice of appeal deprived us of subject-matter jurisdiction.

As a consequence of *Elyria*, supra, the Board of Tax Appeals now considers this matter. The appeal concerns the Lorain County Budget Commission's apportionment and distribution of the 2006 Undivided Local Government Fund ("ULGF") and the 2006 Undivided Local Government Revenue Assistance Fund ("ULGRAF"). The appellants argue that the alternative formulas used by the commission to allocate the funds were not legally applicable.

Prior to the 2004 allocation year, the budget commission had been allocating the ULGF and ULGRAF according to an alternate formula first adopted in 1984 ("old formula"). For the 2003 year, the budget commission made its allocation according to the old formula. The city of Lorain appealed from that action, claiming

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[1] Pursuant to R.C. 5747.55, a subdivision may appeal the commission's allocation of the ULGF and ULGRAF to the BTA "in the manner and with the effect provided in section 5705.37 of the Revised Code, in accordance with the following rules ***." Pursuant to the rule codified by R.C. 5747.55(C)(3), the appealing subdivision must attach to its notice of appeal a statement showing, "The name of each participating subdivision, as well as the name and address of the fiscal officer thereof, that the complaining subdivision believes received more than its proper share of the allocation, *and the exact amount in dollars of such alleged over-allocation*." (Emphasis added.) An appeal under R.C. 5747.55 may relate to an allocation made under either the statutory formula or an alternative formula. *Mogadore v. Summit Cty. Budget Comm.* (1987), 36 Ohio App.3d 42.

that the old formula had not been properly adopted. See *City of Lorain v. Lorain Cty. Budget Comm.*, BTA No. 2002-T-1865. Ultimately, the parties resolved the issues among them, and the appeal was voluntarily dismissed. *City of Lorain v. Lorain Cty. Budget Comm.* (Sept. 26, 2003), BTA No. 2002-T-1865, unreported.

Evidently as a consequence of the settlement, a revised alternate formula ("new formula") was proposed for consideration. In September 2003, the budget commission adopted the new formula, which was first used for the 2004 allocations. The distribution year now before us, 2006, was also allocated according to the new formula. The instant appeal was filed by the appellants, each of which received less under the new formula than they did with the old formula. In their notice of appeal, appellants claim that the new alternate formula had not been properly adopted and assert that allocation should be made according to the old formula.

The notice of appeal establishes that the appellants claim the 2006 allocations should be made according to the old formula. Exhibit G of the notice of appeal sets forth the names of the appellee subdivisions and the amounts of claimed overallocation. Column No. 1 of Exhibit G sets forth the 2006 allocations made by the budget commission. In column No. 2 of the exhibit, the appellants list the share of the funds "that should have been allocated under the alternative method used prior to settlement in Case No. 02-T-1865." A review of the exhibit, however, discloses that the appellants do not, in fact, claim that all allocations should be reverted to the prior formula. For example, for both the ULGF and the ULGRAF, the appellants claim that the city of Lorain should maintain the allocation it received under the new formula. A

cursory review of the old formula, however, establishes that the city of Lorain would receive less under the old formula than under the new. See Notice of Appeal at Ex. H for additional information related to the old formula. In addition, the appellants list the allocation for the county's share of the funds at an amount below what the county is entitled to under the old formula. The appellants list the county as being the only overallocated subdivision. Notice of Appeal at Ex. G.

Despite the appellants' claim that they properly listed the alleged overallocation, we note that the record evidences a deliberate decision to exclude the city of Lorain as an over-allocated subdivision. In the section of their notice of appeal in which the appellants state the relief they seek before this board, they ask us to:

> "[A]llocate the 2006 LGF and 2006 RAF among the parties to the appeal in accordance with the alternative method used by the LCBC prior to the settlement of Case No. 02-T-1865, but with any increased allocation to Lorain [city] as the result of such settlement borne only by the Appellees from their allocated shares as provided in Exhibit G and with no reduction suffered by the Appellants." Notice of Appeal at 13.

As we did in *Elyria*, supra, we find that the appellants have, in their statement made under R.C. 5747.55(C)(3), identified only those subdivisions from which they seek to recover their share of the funds, not those subdivisions they believe to be overallocated. By not identifying all entities the appellants believe are overallocated under the new formula, but only setting forth the county as the sole entity to be responsible for any changes in the amounts allocated among the subdivisions, the appellants have created their own formula, an alternative that is beyond the scope of these proceedings. The appellants' failure to comply with the

mandatory requirements of the statute deprives us of subject-matter jurisdiction. *Elryia*, supra; *Cincinnati v. Hamilton Cty. Budget Comm.* (1979), 59 Ohio St.2d 43; *Union Twp. v. Butler Cty. Budget Comm.* (1995), 101 Ohio App.3d 212, at 216, discretionary appeal denied (1995), 72 Ohio St.3d 1551.

In accordance with *City of Elyria v. Lorain Cty. Budget Comm.* (Nov. 17, 2006), BTA No. 2003-T-1533, unreported, we conclude that the appellants have not properly invoked the subject-matter jurisdiction of this board. The Board of Tax Appeals therefore dismisses BTA No. 2005-T-1301.

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.

Julia M. Snow, Board Secretary