

IN THE SUPREME COURT OF OHIO

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

Appellants,

v.

William W. Wilkins  
Tax Commissioner of Ohio

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

06-2389

Appeal from the Ohio Board  
of Tax Appeals

Board of Tax Appeals  
Case No. 2004-T-1166

City of Vermilion

City of Amherst

City of Oberlin

Grafton Village

City of Avon

City of Lorain

South Amherst Village

Columbia Township

LaGrange Township

Lorain County, Ohio

Sheffield Village

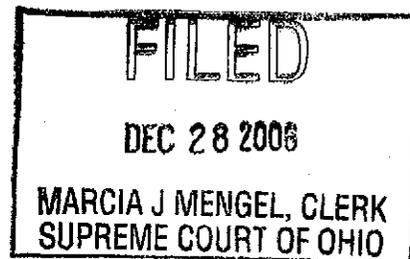
Camden Township

Brighton Township

Rochester Village

Carlisle Township

Lorain County Budget Commission



Board of County Commissioners of  
Lorain County, Ohio

Appellees.

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

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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](mailto: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](mailto: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](mailto: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, 16<sup>th</sup> 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. 2004-T-1166 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 © 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. 2004-T-1166 and such decision of the dismissal was not supported under the law and the facts as

evidenced in the record of BTA Case No. 2004-T-1166, and thus, the decision of the Board of Tax Appeals in Case No. 2004-T-1166 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. 2004-T-1166.

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.

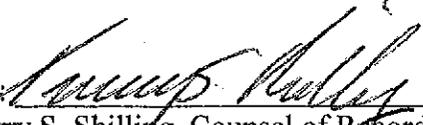
16) The Board of Tax Appeals erred in its determination that the Appellants made a deliberate decision to exclude the City of Lorain as an over allocated subdivision

as it relates to the application of ORC Sections 5747.55 (D), 5705.37, 5747.53 and 5747.63.

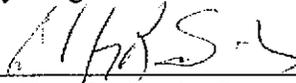
17) The Board of Tax Appeals erred in not recognizing that since the Appellants were not parties to BTA Case No. 02-T-1865, under ORC 5747.55 (D) each Appellant's under allocation of the 2005 LGF and RAF, as stated in the Appellants' Notice of Appeal at Exhibits G and H, was an exact amount that could only be re-allocated to the Appellants from the total 2005 over allocation to the Appellees which exact amount is shown on Exhibits G and H.

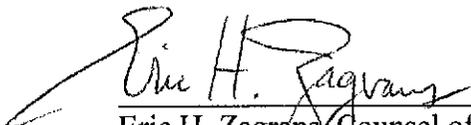
18) The Board of Tax Appeals erred in making its decision to dismiss Appellants' Notice of Appeal under ORC 5747.55 (C)(3) without taking into consideration ORC Sections 5705.37, 5747.53, 5747.55 (D) and 5747.63.

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 Gndant, Clerk of Council  
42760 Peck Wadsworth Road  
Wellington, Ohio 44090

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

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

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

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

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

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

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

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

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., 3<sup>rd</sup> Floor  
Elyria, Ohio 44035

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

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

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

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

John R. Varanese  
Counsel for City of Lorain

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  
Grafton, Ohio 44044

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

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

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, 6<sup>th</sup> Floor  
Lorain, Ohio 44052-1647

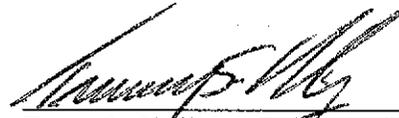
Lorain County, Ohio  
Attn: James Cordes  
226 Middle Avenue  
Elyria, Ohio 44035

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

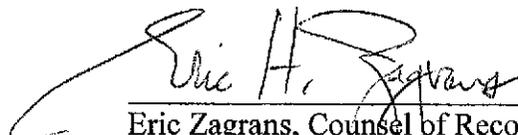
City of Oberlin  
Salvatore Talarico, City Auditor  
69 S. Main Street  
Oberlin, Ohio 44074



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

**OHIO BOARD OF TAX APPEALS**

City of Elyria, City of Avon Lake, )  
City of North Ridgeville, Amherst )  
Township, and Lorain County )  
Metropolitan Park District, )

Appellants )

vs. )

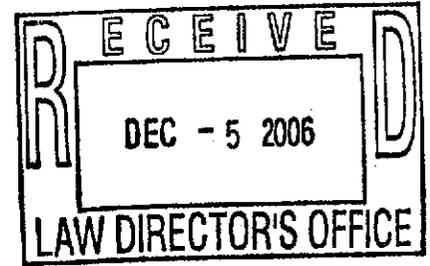
Lorain County Budget Commission, et al., )

Appellees. )

CASE NO. 2004-T-1166

(BUDGET COMMISSION:  
ULGF and ULGRAF)

DECISION AND ORDER



**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  
7<sup>th</sup> 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  
3<sup>rd</sup> 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 Royaltown 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  
2<sup>nd</sup> 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 Grandt  
Clerk, Penfield Township  
42760 Peck Wadsworth Road  
Wellington, Ohio 44090

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

Entered DEC 1 2006

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).<sup>1</sup> 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 2005 Undivided Local Government Fund ("ULGF") and the 2005 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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<sup>1</sup> 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, 2005, 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 2005 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 2005 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 *Elyria*, supra, 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:

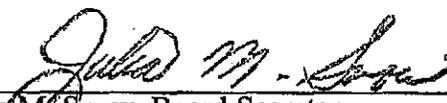
“[A]llocate the 2005 LGF and 2005 RAF among the parties to the appeal in accordance with the alternative method used by the LCBC prior to the settlement of Case No. 02-T-1865, but with any increased allocation to Lorain [city] as the result of such settlement borne only by the Appellees from their allocated shares and with no reduction suffered by the Appellants.” Notice of Appeal at 12.

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. *Elyria*, 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. 2004-T-1166.

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.

  
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Julia M. Snow, Board Secretary