IN THE SUPREME COURT OF OHIO

CITY OF ELYRIA, OHIO; CITY OF NORTH RIDGEVILLE, OHIO; CITY OF AVON LAKE, OHIO; AND AMHERST TOWNSHIP, OHIO,	)	CASE NOS. 06-2293, 06-2389 and 06-2390 (Consolidated)
Appellants,	)	On Appeal from the Ohio Board of Tax Appeals
vs.	)	
RICHARD LEVIN, Tax Commissioner of Ohio, *et al.*,	)	Case Nos. 2003-T-1533, 2004-T-1166 and 2005-T-1301
Appellees.	)	

REPLY BRIEF OF APPELLANTS, CITY OF ELYRIA, OHIO; CITY OF NORTH RIDGEVILLE, OHIO; CITY OF AVON LAKE, OHIO; AND AMHERST TOWNSHIP, OHIO

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INTRODUCTION

After three years of litigation before the Board of Tax Appeals, and following a day-long evidentiary hearing on the merits, an issue never raised by the parties regarding the contents of the notices of appeal became the basis on which the Board dismissed these consolidated appeals for lack of jurisdiction. Appellees in their Merit Briefs condemn Appellants' supposed "gamesmanship" and nefarious tactics in filing notices of appeal that are facially defective and illogical. One is left to wonder how plain and egregious Appellants' errors must have been for Appellees to have missed them for over three years as well.

Appellants hereby respond to four erroneous contentions set forth in Appellees' Merit Brief. Contrary to Appellees' argument:

1. Appeals to the Board of Tax Appeals from alternative-formula allocations are not required to follow the procedural requirements of R.C. 5747.55(C)(3).

2. The provisions of R.C. 5705.37 constitute an independent basis of appellate jurisdiction from the unlawful actions of a county budget commission.

3. Instead of constituting a deliberate tactical decision to "omit" Lorain from the notices of appeal, Appellants' notices of appeal named Lorain and every other subdivision in Lorain County as parties to these appeals, specified the exact amount by which Lorain's allocation increased for each year in question, and identified Lorain County as the only subdivision they "believed" had been over-allocated because Lorain's increase resulted from the resolution of the prior 2002 Lorain Appeal before the Board of Tax Appeals that Appellants believed could not be relitigated. Thus, Appellants' notices of appeal substantially complied with the procedural requirements of R.C. 5747.55(C)(3).

4. Appellants do not seek equitable relief, and any purported jurisdictional argument predicated on alleged equitable claims is unavailing.

ARGUMENT

Proposition of Law No. 1: The Ohio Board of Tax Appeals has proper subject-matter jurisdiction over these consolidated appeals pursuant to R.C. 5747.53 and 5747.63, and the procedural requirements of R.C. 5747.55(C)(3) do not apply to such appeals.

Proposition of Law No. 2: The Ohio Board of Tax Appeals has proper subject-matter jurisdiction over these consolidated appeals pursuant to R.C. 5705.37, and the procedural requirements of R.C. 5747.55(C)(3) do not apply to them.

A. R.C. 5747.55 DOES NOT GOVERN ALL APPEALS FROM LGF OR RAF ALLOCATIONS. R.C. 5747.55 ONLY APPLIES TO APPEALS FROM STATUTORY FORMULA ALLOCATIONS. APPEALS FROM ALTERNATIVE FORMULA ALLOCATIONS ARE NOT REQUIRED TO FOLLOW THE PROCEDURES OF R.C. 5747.55(C)(3).

Appellants demonstrated in their opening Merit Brief (at pages 13-15) that the procedural requirements of R.C. 5747.55(C)(3), on which the Ohio Board of Tax Appeals based its dismissal of these appeals for want of jurisdiction, do not apply to appeals from ***alternative formulas*** adopted pursuant to R.C. 5747.53 (LGF) or R.C. 5747.63 (RAF); rather, the procedural requirements of R.C. 5747.55(C)(3) apply by their express terms only to appeals from ***statutory formulas*** adopted pursuant to R.C. 5747.51 (LGF) or R.C. 5747.62 (RAF). As R.C. 5747.55 expressly provides:

> The action of the county budget commission ***under sections 5747.51 and 5747.62 of the Revised Code*** may be appealed to the board of tax appeals in the manner and with the effect provided in section 5705.37 of the Revised Code, in accordance with the following rules . . . (emphasis supplied).

R.C. 5747.55(C)(3) is one of the enumerated "following rules."

Although this Court,[1] the Franklin County Court of Appeals[2] and the Board of Tax Appeals itself[3] have all recognized that the provisions of R.C. 5747.55(C)(3) are limited to appeals from a statutory formula allocation, and that appeals from an alternative formula are not

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[1] *Shawnee Township v. Allen Cty. Budget Comm.* (1991), 58 Ohio St.3d 14, 15.

[2] *Union Township v. Butler Cty. Budget Comm.* (10th Dist. 1995), 101 Ohio App.3d 212, 216.

[3] *Village of Mogadore v. Portage Cty. Budget Comm.*, 1989 WL 82882 (Ohio Bd. Tax App.) (Appx. 137).

required to comply with them, Appellees erroneously contend that R.C. 5747.55 governs the right to appeal any budget commission allocation of LGF or RAF monies, not just statutory formula allocations. Appellees base their argument solely upon their misreading of R.C. 5747.51(B).[4] Appellees' tortured illogic seems to be:

(i) R.C. 5747.55 concededly applies by its express terms to appeals from allocations based on the statutory formulas of R.C. 5747.51 or 5747.62;

(ii) Both R.C. 5747.51(B) and R.C. 5747.62(B) mention that the statutory formulas provided by those sections do not apply if the budget commission has adopted an alternative formula under R.C. 5747.53 or R.C. 5747.63; and

(iii) Therefore, the mere ***mention*** of R.C. 5747.53 and R.C. 5747.63 in the language of R.C. 5747.51(B) and R.C. 5747.62(B) means that the appeal procedures of R.C. 5747.55 must apply as well to those sections referred to in R.C. 5747.51 and R.C. 5747.62.

Appellees' false syllogism fails for two reasons. First, if the General Assembly had intended the procedures of R.C. 5747.55 to govern appeals from alternative formula allocations under R.C. 5747.53 and R.C. 5747.63, it would have specified those sections explicitly in R.C. 5747.55. Second, although Appellees' position is supported by a solitary appellate decision, *Village of Mogadore v. Summit Cty. Budget Comm.* (9th Dist. 1987), 36 Ohio App.3d 42, in which the Summit County Court of Appeals made the same leap of illogic as Appellees have in

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[4] R.C. 5747.51(B) provides, in pertinent part:

The commission, after extending the representatives of each subdivision an opportunity to be heard, under oath administered by any member of the commission, and considering all the facts and information presented to it by the auditor, shall determine the amount of the undivided local government fund needed by and to be apportioned to each subdivision for the current operating expenses, as shown in the tax budget of the subdivision. This determination shall be made pursuant to subdivisions (C) to (I) of this section, unless the commission has provided for a formula pursuant to section 5747.53 of the Revised Code.

this case, that theory was expressly rejected by the Board of Tax Appeals just two years later:

> This section [R.C. 5747.53] clearly states that the alternative method is in lieu of the statutory formula provided in section 5747.51. Therefore, ***an appellant does not have to follow the appellate procedure provided in section 5747.55 where the appeal is taken from the adoption of an alternative method of apportionment.*** Section 5747.55 must be followed when the appeal is from the statutory formula of section 5747.51.

Village of Mogadore v. Portage Cty. Budget Comm., 1989 WL 82882 (Ohio Bd. Tax App.) (emphasis supplied).

Surprisingly, Appellees also contend that the decision in *Union Township v. Butler Cty. Budget Comm.* (10th Dist. 1995), 101 Ohio App.3d 212, supports their position. As Appellees represent to the Court:

> Ultimately, the *Union Township* court ruled that R.C. 5747.55 applies to appeals from alternative formula allocations. *Id.* at 214.

(Appellees' Merit Brief at 10.) This is a complete misstatement. The Franklin County Court of Appeals did not rule in *Union Township* that R.C. 5747.55 applies to appeals from alternative formula allocations.[5] In fact, the court held, consistent with Appellants' position in this case:

> According to R.C. 5747.55, subdivisions may appeal the action of the budget commission taken under R.C. 5747.51, the statutory formula allocation, to the BTA in the manner and with the effect provided in R.C. 5705.37. On the other hand, subdivisions dissatisfied with the alternative formula allocations may, according to R.C. 5747.53(E) [now (G)], appeal to the BTA only for abuse of discretion or failure to comply with the formula.

Id. at 216, *citing Shawnee Twp. v. Allen Cty. Budget Comm.* (1991), 58 Ohio St.3d 14. The

[5] Unlike this case, there was a significant controversy in *Union Township* whether the allocations should be redistributed in accordance with the statutory method in the absence of a validly-adopted alternative formula. The Board of Tax Appeals had determined it had proper jurisdiction, and had decided on the merits that "the distribution of the local government funds had not been in accordance with R.C. 5747.53 and remanded the matter to the Butler County Budget Commission with instructions to 'redistribute funds under R.C. 5747.51 and R.C. 5747.62 on the basis of need.'" *Id.* at 214 (emphasis supplied). In the absence of a validly-adopted alternative formula, the Court concluded that the statutory method had to be utilized for allocating funds. Any appeal from a statutory method must follow the procedural requirements of R.C. 5747.55(C)(3). Since they were not followed in *Union Township*, the Court concluded that the Board of Tax Appeals lacked jurisdiction over the appeal. *Id.* at 218-221.

procedural requirements of R.C. 5747.55(C)(3) were held to apply in *Union Township* only because it involved an appeal to the Board of Tax Appeals from a statutory allocation of local government funds in the absence of a validly-approved alternative formula.

Thus, the court in *Union Township*, relying on this Court's decision in *Shawnee Township*, makes a clear distinction between appeals from statutory method allocations (to which the procedural requisites of R.C. 5747.55(C)(3) apply) and appeals from alternative formula allocations (to which they do not). Appellees seek to avoid this distinction that is fatal to their argument by dismissing it as "dicta." (Appellees' Merit Brief at 12.) To the contrary, however, Appellants submit that the rulings and rationale of this Court's jurisprudence should not be dismissively characterized as "dicta" when it directly supports and authorizes the holding of a lower appellate court,[6] as in the Franklin County Court of Appeals in *Union Township* relying on this Court's pronouncement in *Shawnee Township*.

Therefore, by clear and unambiguous language, the procedural requirements of R.C. 5747.55(C)(3) do not apply to appeals from alternative formula allocations. Appellees' argument to the contrary is unavailing, unsupported by persuasive or authoritative precedent, and wrong.

B. R.C. 5705.37 Provides an Independent Basis for Appealing the Budget Commission's LGF and RAF Allocations in this Case.

In their opening Merit Brief, Appellants argued alternatively that R.C. 5705.37 also confers jurisdiction on the Ohio Board of Tax Appeals to hear any appeal from the actions of a county budget commission with which a local subdivision is dissatisfied, including without limitation LGF and RAF alternative-formula allocations, and that the procedural requirements of R.C. 5747.55(C)(3) certainly do not apply to such appeals. (Appellants' Merit Brief at 16-18.)

R.C. 5705.37 provides, in relevant part:

> The taxing authority of any subdivision that is ***dissatisfied with any action of the county budget commission*** may . . . appeal to the board of tax appeals . . . The board of tax appeals, ***in a de novo proceeding***, shall forthwith consider the matter presented to the commission, and may modify any action of the commission. . . . The finding of the board of tax appeals shall be substituted for the findings of the commission. . . . (Emphasis supplied.)

Appellants maintain that this language is broad enough to encompass and authorize appeals from any action of a county budget commission, including but not limited to alternative formula allocations of LGF and RAF.

Although *City of Canton v. Stark Cty. Budget Comm.* (1988), 40 Ohio St.3d 243, dealt with an allocation based on a statutory formula, this Court interpreted the language of R.C. 5705.37 as authorizing the Board of Tax Appeals to hear *de novo* the appeal of the allocation and to substitute its own judgment for that of the county budget commission. *Id.* at 249. The Court reviewed R.C. 5747.55 and determined that "[n]o change may be made in the amount allocated to the participating subdivisions that are not appellees before the BTA." *Id.* This Court then stated, "[a]ccording to *Berea*, if another subdivision perceives unfairness, that subdivision must bring its own appeal." *Id., citing Berea City School Dist. v. Cuyahoga Cty. Budget Comm.* (1979), 60 Ohio St.2d 50, 54-55.

Under the holdings of *Canton* and *Berea*, if a participating subdivision perceives that it is the victim of unfairness as a result of the LGF or RAF allocation by a county budget commission, then that subdivision has an independent right of appeal. Appellants assert that such a right of appeal derives from the language of R.C. 5705.37 and applies to appeals from both statutory-method and alternative-formula allocations.

(continued...)

[6] Moreover, "dicta" may not always carry with it the empty meaning Appellees would like. In fact, the dictionary definition includes the notation that "dicta" is "a statement of opinion or belief considered authoritative

This Court in *Canton* and *Berea* adopted the fairness principles animating R.C. 5747.55(D) and incorporated them into R.C. 5705.37 appeals. However, that adoption of R.C. 5747.55(D) fairness principles does not mean that appeals under R.C. 5705.37 must follow all of the procedural requirements of R.C. 5747.55. R.C. 5747.55 specifically requires compliance with R.C. 5705.37, but R.C. 5705.37 does not even mention R.C. 5747.55. Thus, R.C. 5705.37 is an independent avenue of appeal that is not subject to the procedural requirements of R.C. 5747.55.

Accordingly, a participating subdivision that is subjected to unfair hardship as the result of the LGF or RAF allocation by a county budget commission has an independent right of appeal under R.C. 5705.37. *See City of Canton, supra.* In this case, Appellants named all subdivisions within Lorain County as Appellees; no parties were excluded. However, Appellants were not named as appellees in the Lorain Appeal that resulted in Appellants' funding under LGF and RAF being reduced for the years 2003-2006, inclusive. As a consequence of the resolution of an appeal to the Board of Tax Appeals from which they were excluded as parties, Appellants suffered an unfair hardship to their interests in maintaining their share of LGF and RAF allocations.

Therefore, under this Court's holdings in *Berea* and *Canton,* Appellants have an independent right of appeal under R.C. 5705.37 and the Board of Tax Appeals has valid subject-matter jurisdiction over such an appeal. The Board also has the authority to modify the actions of the Lorain County Budget Commission that resulted in unfair hardship to Appellants from the reduction in Appellants' LGF and RAF allocations as a consequence of a prior proceeding from which Appellants were excluded as parties.

(continued...)

because of the dignity of the person making it." *Black's Law Dictionary* (Eighth Edition).

Proposition of Law No. 3: In resolving questions regarding the effectiveness of a notice of appeal to the Ohio Board of Tax Appeals, the Court should not be disposed to deny review by a hyper-technical reading of the notice.

A. CONTRARY TO APPELLEES' FALSE ACCUSATIONS, APPELLANTS DID NOT MAKE A DELIBERATE TACTICAL DECISION TO "OMIT" LORAIN; INDEED, APPELLANTS (I) NAMED LORAIN AND EVERY OTHER SUBDIVISION AS PARTIES, (II) SPECIFIED THE EXACT AMOUNT BY WHICH LORAIN'S ALLOCATION HAD BEEN INCREASED FOR EACH YEAR, AND (III) IDENTIFIED LORAIN COUNTY AS THE ONLY SUBDIVISION THEY "BELIEVED" HAD BEEN OVER-ALLOCATED BECAUSE LORAIN'S INCREASE WAS THE RESULT OF THE RESOLUTION OF A PRIOR APPEAL BEFORE THE BOARD OF TAX APPEALS THAT APPELLANTS BELIEVED WAS NOT OPEN FOR RELITIGATION.

Appellees accuse Appellants of making a deliberate tactical decision to violate the procedural requirements of R.C. 5747.55(C)(3) that each appealing subdivision must identify each participating subdivision that the appellant "believes received more than its proper share of the allocation, and the exact amount in dollars of such alleged over-allocation." (Appellees' Merit Brief at 15-17.) They argue that these procedural requirements are jurisdictional and must be strictly enforced. (*Id.*)

Putting aside the obvious point that it would make absolutely no sense for an appellant to violate jurisdictional requirements and thereby lose its appeal for the sake of a "deliberate tactical decision," Appellants in fact did not violate the procedural requirements of R.C. 5747.55(C)(3), if the Court were to conclude that such requirements apply to an appeal from an alternative-formula allocation, for two reasons.

First, contrary to Appellees' bewilderment, there is no logical incongruity in Appellants' position in these cases. Lorain's allocation was increased as a result of the resolution of the 2002 Lorain Appeal before the Board of Tax Appeals in which Appellants were not included as parties. Appellants' notices of appeal in these cases identified Lorain's allocation as having increased over the 1984 alternative formula, and specified the exact amount of such increase for each year in question. However, Appellants did not believe they could lawfully relitigate the

amount of Lorain's increased allocation, and thus did not believe they could characterize Lorain's increase as an "over-allocation," because the increased allocation resulted from the resolution of the prior tax appeal to which Appellants were not parties.

Thus, Appellants' notices of appeal identified the increased allocations for Lorain, but identified Lorain County as the only subdivision Appellants believed had been over-allocated. Appellees are flatly wrong to argue that "[A]ppellants 'believed' Lorain was over-allocated but, as in *Union Township*, deliberately chose not to identify it as an over-allocated subdivision." (Appellees' Merit Brief at 15.) They are also wrong to suggest that, merely because Lorain County's allocation decreased as a result of the resolution of the 2002 Lorain Appeal, it could not logically be considered "over-allocated." (*Id.* at 17.) Even though its allocation went down, Lorain County was still over-allocated by the amount Appellants' allocations decreased as a result of Lorain's increased allocation stemming from the 2002 Lorain Appeal. There is no logical inconsistency with a decreased amount still being too much to be valid or proper.

Second, Appellants' notices of appeal should be deemed to be in substantial compliance with the procedural requirements of R.C. 5747.55 under these circumstances. As pointed out in Appellants' Merit Brief, each notice of appeal:

(i) expressly stated the action of the Budget Commission from which the subdivisions appealed, the date of their receipt of the official notice of the Budget Commission's action, the errors and abuses of discretion the subdivisions believed the Budget Commission had made, and the specific relief they sought (in satisfaction of the requirements of R.C. 5747.55(A));

(ii) attached copies of the respective resolutions authorizing them to file the appeal, the notices of the action of the Budget Commission appealed from, and their respective budget requests filed with the Budget Commission

(satisfying the provisions of R.C. 5747.55(B)); and, most significantly

(iii) attached an Exhibit G to each Notice (Appx. 94-97, 287-90, 458-61, respectively) showing (1) the amounts allocated to each participating subdivision from each fund, (2) the amounts which each Appellant believed it should have received from each fund, and (3) the name of each participating subdivision that Appellants believed received more than its proper share of the allocation, together with (4) the amount of such alleged over-allocation (as required by R.C. 5747.55(C)).

Each notice of appeal identified Lorain as having received an increased allocation, and specified the exact amount of the increase for each year in question. Thus, the jurisdictional requirement was satisfied in these cases by Appellants' identification of each subdivision that they "believed" received more than its proper allocation, along with the amount of such alleged over-allocation.

Appellants' compliance with the procedural requirements of R.C. 5747.55 can be readily confirmed from their comprehensive statement (Exhibit G) appended to each notice of appeal that identified the only participating subdivision Appellants believed to have been over-allocated – Lorain County – and the exact amount they believed to have been over-allocated for each fund and year in question. Appellants identified Lorain's increased allocation and specified the amounts of such increased allocation, but did not name Lorain as being over-allocated because, in light of the resolution of the Lorain Appeal less than a month previously, they did not believe the increased allocation to Lorain was open for relitigation.

The Board erred in concluding it lacked jurisdiction over these three appeals and in dismissing on the sole basis of supposedly defective notices of appeal because Appellants' notices of appeal in fact included all of the information required by R.C. 5747.55(C)(3). The

information specified by R.C. 5747.55(C)(3) was included in each Notice of Appeal; the statute does not require any further merits analysis of such information in order to confer valid jurisdiction.

B. APPELLEES' ACCUSATION OF "GAMESMANSHIP" IS MISGUIDED.

Appellees resort to accusing Appellants of "playing games" with their arguments to this Court:

> Appellants are playing games with their notices of appeal. They identified the subdivision they wanted to recover from (the County), not the subdivision they believed to have been over-allocated (Lorain). ***Appellants' 2007 notice of appeal epitomizes this gamesmanship.*** It contains the same attack on the 2004 Formula as the prior notices of appeal and again asks the BTA to revert to allocating the LGF and RAF under the 1984 Formula. However, ***although nothing else changed***, this time appellants claimed that Lorain was over-allocated and that the County was properly allocated. Appellants' flip-flop in their latest notice of appeal proves that their decision to exclude Lorain as an over-allocated subdivision in their previous filings was calculated, deliberate, and disingenuous.

(Appellees' Merit Brief at 17) (citation and footnote omitted) (emphasis supplied). This attack on Appellants' integrity, questioning whether they are being forthright with the Court, is outrageous and stems from either not knowing the facts or willfully ignoring them. To say "nothing else changed" with respect to the 2007 notice of appeal from those that preceded it is neither credible nor correct. There was, in fact, a substantial change of circumstances, as Appellees know full well – for the first time, the municipal population of Lorain County reached 81% or more of the county population. Under such circumstances, it is mandatory that "[t]he percentage share [of LGF or RAF allocations] of the County shall not exceed thirty (30) percent," irrespective of whether the allocation is pursuant to the statutory method or an alternative formula.[7]

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[7] *See* R.C. 5747.51, 5747.53, 5747.62 and 5747.63.

For the year 2007, the share allocated by the Budget Commission to Lorain County was exactly 30% of the LGF and RAF. Therefore, pursuant to statute, Lorain County was not over-allocated for 2007. However, the City of Lorain's share was increased above the settlement amount from the 2002 tax appeal – thus Lorain was over-allocated for 2007 for the first time.

The Court should see through Appellees' specious and misguided attack on Appellants' credibility and disregard it.

C. APPELLANTS DO NOT SEEK EQUITABLE RELIEF, AND APPELLEES' ATTEMPT TO JUSTIFY THE BOARD'S DISMISSAL ON THE BASIS (UNSTATED BY THE BOARD) THAT THE BOARD LACKS JURISDICTION OVER EQUITABLE CLAIMS IS UNAVAILING.

Appellants' Notice of Appeal does not seek "equitable relief" – it identifies the errors and abuses of discretion that the Budget Commission committed in the LGF and RAF allocations in question, and seeks the appropriate relief to which Appellants are entitled pursuant to applicable statutory authority and relevant case law.

In *City of Canton v. Stark Cty. Budget Comm.* (1988), 40 Ohio St.3d 243, this Court held that, under R.C. 5705.37, the BTA hears appeals *de novo* and substitutes its findings for those of a county budget commission. *Id.* at 244, *citing Brooklyn v. Cuyahoga Cty. Budget Comm.* (1965), 2 Ohio St.2d 181. In *Pal v. Hamilton Cty. Budget Comm.* (1996), 74 Ohio St.3d 196, 199, the Court held that "necessary parties under R.C. 5705.37 were ***those subdivisions*** within the county which are ***affected by the appeal***" (emphasis supplied).

In *Austintown Township v. Mahoning Cty. Budget Comm.* (1986), 24 Ohio St.3d 83, this Court reversed the Board of Tax Appeals' decision that had dismissed an appeal on the grounds that the notice of appeal did not sufficiently describe the errors the budget commission was alleged to have made, as required by R.C. 5747.55(A)(2). The purpose of a notice of appeal, the Court stated, "is to define the scope of issues to be contested on an appeal." *Id.* at 85. The Court further noted that:

> "[i]n enacting R.C. 5747.55, the General Assembly established high jurisdictional hurdles in order to discourage 'fishing expeditions' by municipalities . . . which believe they may have been shortchanged by the county budget commission in its allocation of local government funds."

Id., quoting Cincinnati v. Hamilton Cty. Budget Comm. (1979), 59 Ohio St.2d 43, 46. However, in reversing the Board's dismissal order, this Court squarely held that

> where a taxing district alleges in good faith that a budget commission [committed an error, abused its discretion or failed to follow the alternative formula], the taxing district's notice of appeal is sufficient to confer jurisdiction on the Board of Tax Appeals where it assigns error to [the relevant actions by the budget commission].

Id. By so holding, this Court established a standard of "good-faith" compliance rather than "strict" compliance with the procedural requirements of R.C. 5747.55.

When read in its entirety, Appellants' Notices of Appeal in these cases clearly identify the errors complained of and what is in dispute – the actions of the Budget Commission in reducing Appellants' LGF and RAF allocations for the years 2003, 2004, 2005 and 2006, based upon the settlement of an appeal to the Board of Tax Appeals in which Appellants were not named as parties. To determine otherwise is unreasonable, unfair and unjust.

As shown above and in Appellants' Merit Brief, the law gives the Board of Tax Appeals the authority to rectify the "unfair acts" of a county budget commission. The Board is authorized to substitute its own findings and judgment for that of the budget commission in appropriate circumstances. To the extent that such relief can be characterized as "equitable," it is clearly allowable under the statutory authorities and case law specified above, and Appellees' purported "Proposition of Law No. 4" is without merit.

CONCLUSION

For these reasons, and the reasons more fully set forth in Appellants' Merit Brief, the jurisdictional decision of the Ohio Board of Tax Appeals should be reversed and these consolidated appeals should be remanded for a determination on the merits.

DATED: April 23, 2007

Respectfully submitted,

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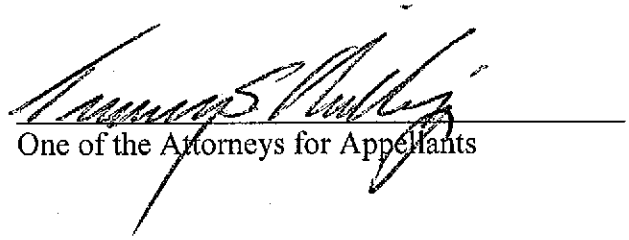
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief of Appellants City of Elyria, Ohio, City of North Ridgeville, Ohio, City of Avon Lake, Ohio, and Amherst Township, Ohio, was served by ordinary U.S. mail, postage prepaid, upon John K. McManus, Senior Deputy Attorney General, OFFICE OF THE ATTORNEY GENERAL OF OHIO, State Office Tower, 30 East Broad Street, 16th Floor, Columbus, Ohio 43215-3428, counsel for Appellees, Richard Levin, Tax Commissioner of Ohio, *et al.*; John T. Sunderland, THOMPSON HINE LLP, 10 West Broad Street, Suite 700, Columbus, Ohio 43215-3435, counsel for Appellees, Lorain County and Lorain County Commissioners; Gerald A. Innes, Assistant Prosecuting Attorney for Lorain County, OFFICE OF THE LORAIN COUNTY PROSECUTOR, Lorain County Courthouse, Elyria, Ohio 44035, counsel for Appellee, Lorain County Budget Commission; John R. Varanese, 85 East Gay Street, Suite 1000, Columbus, Ohio 43215-3118, counsel for Appellee, City of Lorain, Ohio; and Luke F. McConville, WALDHEGER-COYNE, 1991 Crocker Rd., Suite 550, Westlake, Ohio 44145, counsel for Appellee, Sheffield Village, Ohio, this 23rd day of April, 2007.



One of the Attorneys for Appellants