

**ORIGINAL**

**IN THE SUPREME COURT OF OHIO**

City of Elyria, et al.,	)	
	)	
Appellants,	)	Case Nos. 2010-0564
	)	
v.	)	
	)	On Appeal From The
Lorain County Budget Commission, et al.,	)	Ohio Board of Tax Appeals
	)	
Appellees.	)	

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MERIT BRIEF OF APPELLEE AND CROSS-APPELLANT LORAIN COUNTY

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## INTRODUCTION

In this appeal Elyria, North Ridgeville, Avon Lake, and Amherst Township (collectively “Elyria” or “Appellants”) challenge the method used to allocate the 2004, 2005, and 2006 Lorain County Undivided Local Government Fund and Undivided Local Government Revenue Assistance Fund (the “LGF”). The Lorain County Budget Commission (“Budget Commission”) allocated these funds pursuant to an alternative method adopted in 2003 to govern allocations for tax year 2004 and thereafter (the “2004 Formula”). The sole question in this appeal is whether Elyria is entitled to the specific relief requested in its notices of appeal to the Board of Tax Appeals (“BTA” or “Board”).

Elyria first argues that R.C. 5747.55(D) prohibits the 2004 Formula from changing Elyria’s prior year’s allocation percentage in any subsequent year merely because the Formula was adopted in connection with the settlement of a prior year’s appeal and Elyria was not a party to that appeal. Elyria asks this Court to take the money necessary to reinstate its previous percentage solely from Lorain County, not because any lawfully recognized method of allocating the LGF would require that result, but because the County is the only subdivision Elyria named as a target.

As a matter of well-established Ohio law, Elyria is not entitled to this relief. To begin with, the Revised Code does not permit the extra-statutory relief Elyria demands. It recognizes only two methods for allocating the LGF: (1) a statutory formula set forth in R.C. 5747.51; or (2) an alternative formula adopted pursuant to Section 5747.53.<sup>1</sup> Elyria does not request relief under either method. Instead, it demands a hybrid allocation, assigning some subdivisions their

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<sup>1</sup> Sections 5747.51 and 5747.53 govern allocation of the local government fund. At the relevant times, sections 5747.62 and 5747.63 provided identical statutory and alternative methods for allocating the revenue assistance fund. The revenue assistance fund statutes have since been repealed.

pre-2004 Formula percentages, retaining other percentages from the 2004 Formula, and insisting that the County pay the cost of the differences in those percentages. The statute's command is clear and mandatory; the Budget Commission's allocations "*shall* be made pursuant to [the statutory formula], unless the commission has provided for [an alternative] formula pursuant to section 5747.53 of the Revised Code." R.C. 5747.51(B) (emphasis added). Allocations by any method other than the statutory or a properly adopted alternative formula are invalid as a matter of law.

Because the 2004 Formula is a valid alternative formula, it must govern these allocations. Although Elyria originally attacked the timing and method by which the Formula was adopted, it has abandoned that challenge. There is no longer any dispute that the 2004 Formula was timely and validly adopted. Where an alternative method has been properly adopted, it *shall* govern the LGF allocation. Because there is no question the Budget Commission followed the formula in making the allocations under appeal, the 2004 Formula governs as a matter of law.

Ultimately, Elyria's argument misconstrues R.C. 5747.55(D) and flies in the face of the General Assembly's mandate that counties can adopt alternative methods of allocation. Section 5747.55(D) does not prevent changes to a subdivision's allocation in future years, it forbids changes in allocations only for the appeal year in which the subdivision was not a party. Thus, the section could not apply because the 2004 Formula had nothing to do with the 2003 allocation, and because Elyria's allocation for that year – the only year in which it was not party to an appeal – DID NOT CHANGE. Elyria's theory would also mean that a county could never adopt an alternative allocation method if any of the formula's proponents were motivated to approve it in order to resolve a prior appeal, even if the formula applied prospectively only – as the 2004 Formula does – and even if all of the adoption requirements in R.C. 5747.53 were met – as they were.

Finally, there is no evidence of or finding that Lorain County received too large an LGF allocation for any year. In fact, Elyria's evidence proved that the County could not have been over-allocated. Like Elyria, the County was not a party to the prior year's appeal. Like Elyria, the County's allocation under the 2004 Formula decreased from what it had previously been. Only the City of Lorain received an increased allocation. Because Lorain County could not have been over-allocated using the 2004 Formula instead of the prior allocation method, Elyria is not entitled to the relief it requests.

Elyria also argues that Lorain County's 2006 allocation must be reduced to 30% of the LGF, supposedly because the population of the municipal subdivisions in the county exceeded 81% of the total county population at some point during that year. But Elyria never pursued this issue at the BTA, never requested the BTA to hear or decide the matter, and introduced no evidence whatsoever concerning any population figures for any subdivision for any year. Elyria therefore waived the argument and cannot now assert it for the first time on appeal.

#### **STATEMENT OF FACTS**

Before 2003, the Budget Commission allocated the LGF according to percentages originally derived from a method proposed in the mid-1980's (the "Old Alternative Method"). The City of Lorain challenged its 2003 allocation, alleging that the Old Alternative Method had never been properly adopted. The evidence proved Lorain was right, so the county subdivisions began discussing how to resolve Lorain's appeal and whether to develop a new alternative formula to take the place of the discredited old method. As a result of these discussions, the 2004 Formula was proposed, negotiated, and submitted to the county subdivisions for approval. Lorain County; Lorain, the city with the largest population; and an overwhelming majority of the remaining subdivisions, all approved the 2004 Formula in time for it to control the 2004 LGF

allocation. The Budget Commission has made its allocations pursuant to the 2004 Formula ever since.

Although it was not a party to Lorain's 2003 appeal, Lorain County participated in the settlement. In return for dismissing its appeal, the City was paid \$500,000 by the County. None of the 2003 allocations changed for any of the subdivisions.<sup>2</sup> In addition, the new formula increased Lorain's allocation modestly for 2004 and thereafter over what it had been under the Old Alternative Method. Lorain was the only subdivision that received an increased allocation pursuant to the new formula. Lorain County's share, and the allocations for the remaining subdivisions, including the four Appellants, decreased slightly.

Elyria appealed its allocation.<sup>3</sup> The BTA held an evidentiary hearing in January 2006, at which all parties had the opportunity to present evidence and legal arguments. Ultimately, the BTA dismissed the appeals for lack of subject-matter jurisdiction.

In 2008, this Court reversed the BTA's decision and remanded. *Elyria v. Lorain Cty. Budget Comm.*, 117 Ohio St.3d 403, 2008-Ohio-940. The Court concluded that, even if it failed on the merits, Elyria had at least specified a "coherent" theory as to which subdivisions had been over-allocated, and that was enough to confer jurisdiction upon the BTA to consider the merits. *Id.* at ¶24. The Court, however, imposed strict limitations on what was left in the case to decide.

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<sup>2</sup> Appellants repeatedly and falsely state that their 2003 allocations decreased. Appellants' Br. 5-6 ("Appellants herein had their LGF/RAF allocation decreased for 2003"), *id.* at 6 (Appellants bore a "decrease in their aggregate allocation for 2003"), *id.* at 13 (the 2004 Formula "reduced [Appellants'] allocation for the 2003 distribution"), *id.* at 14 (same). Their own admissions and sworn testimony confirmed that each Appellant received and kept every dollar that it had been allocated for 2003. Appellants' Responses to Request for Admission # 10 and Interrog. # 14 as Amended or Supplemented (Appellees' Supplement pp. 1-28); Tr. 117, 131, 139-40 (*id.* at pp. 32-34).

<sup>3</sup> A fifth subdivision, the Lorain County Metropolitan Park District, also appealed. However, it did not challenge the initial BTA decision, and is no longer a party to this litigation.

The BTA could not reinstate the Old Alternative Method. *Id.* at ¶29. Nor could it apply the statutory method of allocation. *Id.* at ¶30. The sole question for decision was “whether Elyria is entitled to the specific relief reflected by the figures in Exhibit G of the notices of appeal.” *Id.* at ¶28. Should Elyria succeed in invalidating the 2004 Formula, the BTA would either have to reinstate the Old Alternative Method or employ the statutory method; but since it lacked jurisdiction to do either, it would have to again dismiss the appeals. *Id.* at ¶31.

On remand, the BTA invited the parties to submit evidence and any briefing they desired regarding the Supreme Court’s instructions on remand. Ultimately, the BTA ruled that the 2004 Formula was properly adopted, that it governed the allocations under appeal as a matter of law, and that the Revised Code did not guarantee Elyria’s past allocations for future years. However, despite having just ruled that the 2004 Formula was valid and did govern, the BTA re-characterized a portion of Lorain County’s 2004 allocation to be a re-allocation of 2003 funds, and amended the Formula for 2004 to remove a pro-rata share of a \$250,000 component that had been allocated to the County under the Formula. This appeal and cross-appeal followed.

The BTA’s decision that the 2004 Formula is valid and controls these allocations is correct and should be affirmed. Its decision to treat part of the 2004 allocation as if it were a 2003 re-allocation is unreasonable and unlawful, and should be reversed. The Budget Commission’s 2004, 2005, and 2006 allocations were correct and should remain intact.

## **ARGUMENT IN OPPOSITION TO APPELLANTS’ APPEAL**

### **STANDARD OF REVIEW**

This Court must affirm the BTA’s decision to reject Elyria’s claims unless the decision was unreasonable or unlawful. R.C. 5717.04; *Cincinnati v. Budget Comm. of Hamilton Cty.* (1979), 59 Ohio St.2d 43, 46. The BTA’s central decision in this case is reasonable and lawful. R.C. 5747.51 and 5747.53 – the statutes that govern how the LGF must be allocated –control

these appeals, and R.C. 5747.55(D) does not preclude the application of the 2004 Formula to Elyria's 2004, 2005, and 2006 appeals. To reverse the BTA's decision would dramatically change Ohio law, would contradict the unambiguous provisions of the controlling statutes, and would radically alter the General Assembly's stated rules for adopting and implementing alternative methods for allocating the local government fund.

**APPELLEE'S PROPOSITION OF LAW NO. 1:**

**WHERE A SUBDIVISION SEEKS A LOCAL GOVERNMENT FUND REALLOCATION BASED ON ANY MECHANISM OTHER THAN THE STATUTORY METHOD SET FORTH IN R.C. 5747.51 OR AN ALTERNATIVE METHOD ADOPTED PURSUANT TO R.C. 5747.53, THE BTA LACKS AUTHORITY TO GRANT THE RELIEF REQUESTED.**

R.C. 5747.51(B) establishes the two exclusive methods by which the LGF can be allocated:

The [county budget] commission ... *shall* determine the amount of the undivided local government fund needed by and to be apportioned to each subdivision .... This determination *shall* be made pursuant to divisions (C) to (I) of this section [the statutory method], unless the commission has provided for a formula pursuant to section 5747.53 of the Revised Code [an alternative formula].

(Emphasis added.) "Shall" means mandatory, imposing an absolute and unqualified obligation. *Anderson v. Hancock Cty. Bd. of Ed.* (1941), 137 Ohio St. 578, 581. Thus, Ohio law permits only two methods for allocating the LGF.

Ohio's courts have repeatedly confirmed the mandatory nature of section 5747.51(B). *East Liverpool v. Columbiana Cty. Budget Comm.* (2000), 90 Ohio St.3d 269, 270 (budget commission "has two options" for distributing local government fund, the statutory method or an alternative formula); *East Liverpool v. Columbiana Cty. Budget Comm.*, 105 Ohio St.3d 410, 2005-Ohio-2283, at ¶6 (there are only two methods of allocating the local government fund: the statutory method specified in R.C. 5747.51, or an alternative method adopted pursuant to R.C. 5747.53); *Englewood v. Montgomery Cty. Budget Comm.* (1987), 39 Ohio App.3d 153, 155,

(budget commission must invoke an alternative formula if it is timely approved or the statutory formula “comes into effect by operation of law”); *Union Twp. v. Butler Cty. Budget Comm.* (1995), 101 Ohio App.3d 212, 216, (if no alternate formula was “properly adopted,” a budget commission must distribute by the statutory method); *Mogadore v. Summit Cty. Budget Comm.* (1987), 36 Ohio App.3d 42, 44, (appeals of budget commission’s action “may relate to allocation under either the statutory formula or an alternative formula”); *Montgomery Cty. Park Dist. v. Montgomery Cty. Budget Comm.* (Dec. 29, 1982), BTA Case No. 80-B-138, 1982 Ohio Tax LEXIS 1, at \*7-10 (if budget commission allocates local government fund in any manner not provided for in R.C. 5747.51, *i.e.*, not by statutory formula or alternative formula, the allocation is without authority and is in error).

Elyria does not seek a statutory formula allocation or an allocation pursuant to any alternative formula. Indeed, this Court’s prior ruling prevents such relief. Elyria demands a reallocation based upon a construct entirely of its imagination. Exhibit G to the 2004 notice of appeal asked the BTA to apply percentages from the Old Alternative Method to every subdivision except Lorain and the County, award Lorain its 2004 Formula allocation, and make the County pay the difference to everyone else. Exhibit G to the 2005 and 2006 notices of appeal similarly asked the BTA to revert all the subdivisions except Lorain and the County to the Old Alternative Method’s percentages and again award Lorain its increased 2004 Formula allocation. This time, the sums Elyria demands the County pay go entirely to Appellants. Thus, in all three appeals, the relief requested is a combination of: (1) percentages from the Old Alternative Method, (2) Lorain’s allocation from the 2004 Formula, and (3) a division of alleged “over-allocated amounts” that comes from no formula at all.

Elyria offers no authority for its hybrid methodology. In contrast, section 5747.53 provides the sole mechanism for adopting an alternative to the statutory formula, and sets forth

the requirements for adopting such an alternative. The relief Elyria requests was never proposed as an alternative formula nor did it receive any of the votes necessary to approve it as such. A comparable request to employ an allocation method of a party's own devising was rejected in *Union Twp.*, 101 Ohio App.3d at 218-19 (affirming dismissal of appellant's attempt to create its own formula).

There are only three possible choices available to Elyria and none of them can be applied in this case. Two of these choices – the statutory formula and the Old Alternative Method – are not available for two reasons: (1) because neither is the relief sought in the notices of appeal; and (2) because this Court has ruled that the BTA lacks jurisdiction to employ them. *Elyria*, 2008-Ohio-940 at ¶29-30. The only option remaining is the 2004 Formula, but again that is not what Elyria requests.

This Court implicitly recognized that Elyria cannot obtain the relief it seeks. In *Elyria*, the Court considered the possible methods of reallocating the Lorain County LGF. It held that the BTA had no jurisdiction to reinstate the old method of apportionment, and lacked jurisdiction to apply the statutory method. *Id.* at ¶29-30. The Court also stated that, if the 2004 Formula were not properly adopted, the BTA must either reinstate the earlier alternative method or use the statutory formula, but because it lacked jurisdiction to do either it would have to dismiss these appeals. *Id.* at ¶31. The Court thus confirmed that the LGF can only be allocated using the statutory or a properly adopted alternative formula. It did not offer the BTA opportunity to allocate pursuant to Elyria's hybrid theory.

This conclusion – that an appeal that invalidates the 2004 Formula must be dismissed – applies no matter what basis is used to attack the formula's validity. This Court has already stated that the BTA would be required to dismiss these appeals if the 2004 Formula were unlawful because it was not adopted in time or did not receive the requisite number of votes.

The BTA must also dismiss the appeals if the 2004 Formula were unlawful because of the application Elyria asserts for section 5747.55(D). If the 2004 Formula is rendered invalid *for any reason*, the allocation must revert to the statutory or an approved alternative method. But the BTA lacks jurisdiction to allocate the LGF pursuant to either of these means.

Because “the specific relief reflected by the figures in Exhibit G of the notice of appeal” is not permitted by Ohio law, the BTA’s refusal to grant that relief must be affirmed.

**APPELLEE’S PROPOSITION OF LAW NO. 2:**

**WHERE AN ALTERNATIVE FORMULA HAS BEEN TIMELY ADOPTED PURSUANT TO R.C. 5747.53, THAT FORMULA GOVERNS LOCAL GOVERNMENT FUND ALLOCATIONS AS A MATTER OF LAW.**

The Budget Commission has used the 2004 Formula for all LGF allocations since it was adopted. In order to prevail, Elyria must avoid the application of that formula. Thus, each of the notices of appeal alleged that the 2004 Formula was invalid because it was not lawfully adopted, and the bulk of Elyria’s record submissions addressed the method and timing by which the formula was approved. Elyria has since abandoned that challenge to the 2004 Formula. Appellants’ Brief at p. 3 (“Appellants [have] withdrawn their claim as to the manner in which the alternative formula for distribution-year 2004 (and subsequent years) was approved”). Thus, there is no longer any dispute that the 2004 Formula was properly adopted in time to govern the 2004 and succeeding LGF allocations.<sup>4</sup>

This fact should end these appeals. The Revised Code commands budget commissions to allocate pursuant to the statutory formula “unless the [budget] commission has provided for an [alternate] formula ....” R.C. 5747.51(B). Where a properly adopted alternative formula exists,

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<sup>4</sup> The subdivisions necessary to adopt the 2004 Formula – the County, the largest city in the county, and a majority of the remaining subdivisions – all approved the formula. See BTA Decision at 8 (Appellants’ Appx. pp. 29-30). Elyria has not appealed that determination.

the local government fund must be allocated pursuant to that alternative formula. *Columbiana Cty. Park Dist. v. Budget Comm.* (Dec. 19, 1994), BTA Case No. 93-D-1174, 1994 Ohio Tax LEXIS 2053, at \*10-11 (budget commission is “legally required” to comply with a properly adopted alternative formula); *Elyria v. Lorain Cty. Budget Comm.* (June 17, 2005), BTA Case No. 2003-T-1533, 2005 Ohio Tax LEXIS 808, at \*4-5 (if alternative formula is applicable, no other action is necessary on the appeals). *See also East Liverpool, supra*, 105 Ohio St.3d at 271 (affirming BTA decision that the budget commission properly allocated funds using a duly approved alternative formula).

Here the Budget Commission “provided for” the 2004 Formula. Pursuant to Section 5747.51(B), that alternative formula “*shall*” govern the Budget Commission’s allocation determinations. Because the 2004 Formula was timely adopted by the necessary subdivisions, by law it must govern these LGF allocations.

Allocations pursuant to a validly adopted alternative formula are final, and they can be challenged only on the basis that a budget commission failed to follow the formula or that it abused its discretion. R.C. 5747.53(G); *see also Shawnee Twp. v. Allen Cty. Budget Comm.* (1991), 58 Ohio St. 3d 14, 15; *Chester Twp. v. Geauga Cty. Budget Comm.* (1976), 48 Ohio St.2d 372, 374 Abuse of discretion means more than a mere error of judgment; it requires “an unreasonable, arbitrary or unconscionable attitude.” *Steiner v. Custer* (1940), 137 Ohio St. 448, syl. ¶2. An abuse of discretion must also include an element of “perversity of will, passion, prejudice, partiality or moral delinquency.” *Minerva v. Carroll Cty. Budget Comm.* (April 28, 1983), BTA Case. No. 80-B-406, 1983 Ohio Tax LEXIS 471, at \*9-10.

Here the Budget Commission precisely followed the 2004 Formula. No party contends otherwise. While Elyria dislikes the result the 2004 Formula produces, it cannot show and has

offered no evidence to prove that the Budget Commission abused its discretion in applying that formula.

In fact, the structure of the 2004 Formula cannot constitute an abuse of discretion. An alternative formula may contain “any factor considered to be appropriate and reliable in the sole discretion of the county budget commission.” R.C. 5747.53(D). The 2004 Formula employs a straight percentage allocation. This Court has already ruled that local governments may “adopt an alternative formula that sets forth an agreed-upon method *or percentage* for the distribution of the funds to each governmental unit.” *Reynoldsburg v. Licking Cty. Budget Comm.*, 104 Ohio St.3d 453, 2004-Ohio-6773, at ¶13 (emphasis added). Alternative formulas based on straight percentage allocations have repeatedly been held to be valid and enforceable. *E.g. Mogadore v. Summit Cty. Budget Comm.* (Mar. 3, 1988), BTA Case No. 83-D-1003, 1988 Ohio Tax LEXIS 311, at \*5-6 (alternative method that allocates on straight percentages is “not in contravention of law” because “R.C. 5747.53 does not require the inclusion of any discretionary factor as part of an authorized alternative method or formula”). *See also e.g. Clay Ctr. v. Budget Comm. of Ottawa Cty.* (Jan. 13, 1989), BTA Case No. 85-D-158, 1989 Ohio Tax LEXIS 2 (affirming alternative allocation based on straight percentages). Thus, nothing in the structure or application of the 2004 Formula can constitute an abuse of discretion.

The Budget Commission’s allocations pursuant to the 2004 Formula are therefore final.

**APPELLEE'S PROPOSITION OF LAW NO. 3:**

**AN ALTERNATIVE FORMULA THAT OPERATES PROSPECTIVELY ONLY AND DOES NOT CHANGE A SUBDIVISION'S ALLOCATION FOR ANY PREVIOUS YEAR DOES NOT VIOLATE R.C. 5747.55(D), EVEN IF ONE INCENTIVE FOR ITS ADOPTION WAS THE SETTLEMENT OF A PRIOR YEAR'S APPEAL.**

Elyria claims that the 2004 Formula cannot change its LGF allocation *for any year* solely because the formula was adopted in connection with a settlement of the 2003 LGF appeal and Elyria was not a party to that 2003 appeal. Elyria is wrong.

First, as the BTA correctly observed, a budget commission must act *each year* to allocate the local government fund; thus, appeals from the commission's actions relate to a specific year. *South Russell v. Geauga Cty. Budget Comm.* (1984), 12 Ohio St.3d 126. Section 5747.55(D) provides only that the allocation to a subdivision that did not participate in the appeal will not change for the year in which that subdivision was not included in the appeal. The statute does not guarantee distributions in subsequent years, or lock in Elyria's allocation for all future years. Elyria offers no authority to the contrary.<sup>5</sup> Because the 2004 Formula had nothing to do with the 2003 allocation, section 5747.55(D) does not prevent it from changing Elyria's allocation for future years.

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<sup>5</sup> Elyria's brief cites a handful of cases, at pp. 16-17, but none of them have anything to do with the proposition Elyria asserts. *Pal v. Hamilton Cty. Budget Comm.* (1996), 74 Ohio St.3d 196, was a taxpayer action challenging a decision to roll back a mental health levy. It had nothing to do with the local government fund and cited R.C. 5747.55 merely as a comparison with the statute at issue in that case. *Canton v. Stark Cty. Budget Comm.* (1988), 40 Ohio St.3d 243, discussed what pool of money was to be reallocated *in that single appeal year*, holding that the funds to be reallocated were limited to those received by the parties to the appeal, not all of the funds for all of the subdivisions. It said nothing about guaranteeing future allocations. *Mogadore v. Summit Cty. Budget Comm.* (1987), 36 Ohio App.3d 42, and *Shawnee Twp. v. Allen Cty. Budget Comm.* (1991), 58 Ohio St.3d 14, addressed whether one appealing a alternative formula allocation had to name as appellees all of the subdivisions or just the ones it believed to have been over-allocated. Neither case had anything to do with whether a budget commission would be prohibited from later approving a alternative formula to govern allocations in future years solely because some subdivisions had not been parties to a prior year's appeal.

Second, R.C. 5747.55(D)'s language confirms that the section applies to appellate redistribution for a specific year, not to what factors may go into a properly adopted alternative formula in the future. R.C. 5747.55 says it governs appeals to the BTA: "[t]he action of a county budget commission may be appealed to the board of tax appeals ... in accordance with the following rules." Subsection (D), the sole claimed support for Elyria's theory, relates only to the BTA's power to reallocate *in the specific appeal before it*:

Only the participating subdivisions named pursuant to division (C) of this section are to be considered as appellees before the [BTA] and no change shall, in any amount be made in the amount allocated to participating subdivisions not appellees.

Here, the 2004 Formula was not a part of Lorain's appeal of the 2003 allocation, the only appeal where Elyria was not a party. Nor did the BTA make any changes to Elyria's allocation. On its face, the section does not restrict the authority of a budget commission and certainly does not impact what might happen in future allocations.

Third, R.C. 5747.55(D) is irrelevant to these appeals because Elyria's 2003 allocation never changed. Elyria falsely states that its 2003 tax year allocation decreased. *See* footnote 2, *supra*. It received exactly the percentage of the 2003 LGF that the Budget Commission allocated to it before the 2003 appeal began. Because the 2004 Formula did not exist when the 2003 LGF was funded – it only became effective for the 2004 allocation – it could not have caused a change in Elyria's 2003 allocation. Because Elyria's 2003 allocation remained intact, R.C. 5747.55(D) never comes into play.

Finally, Elyria's argument would mean that no county could ever adopt an alternative formula if it was related in any way to a prior year's appeal. It is an essential rule of statutory construction that "[w]e must give effect to the words used in the statute, *not delete any words or insert words not used*." *Lesnau v. Andate Enters.* (2001), 93 Ohio St.3d 467, 471 (citations

omitted) (emphasis added). The General Assembly specified in R.C. 5747.53 that the county, largest city, and a majority of the remaining subdivisions may adopt an alternative formula based upon *any* appropriate factor, without restricting that ability with a limitation based on prior year's appeals or how they were resolved. Elyria's argument would, in effect, diminish that statutory power if the new alternative related in any way to a prior year's appeal.

That the 2004 Formula took account of the settlement of Lorain's appeal of its 2003 allocation does not change the fact that the formula received all of the approvals required by R.C. 5747.53. Any event that impacts the needs of a subdivision, whether it be a reduction or an increase in revenue or expenses or settlement of a lawsuit, is appropriate for the county subdivisions to consider in structuring an alternative formula. Elyria erroneously seeks to graft onto the alternative formula mechanism a limitation that does not exist in the statute.

**APPELLEE'S PROPOSITION OF LAW NO. 4:**

**APPELLANTS CANNOT RECOVER FROM LORAIN COUNTY BECAUSE THE COUNTY WAS NOT OVER-ALLOCATED.**

Elyria asks this Court to take money from Lorain County based solely on its unproven statement that the County received an over-allocation. Because there has been no determination that the County was over-allocated – in seven years of litigation Elyria has offered no evidence whatsoever on this issue – Elyria is not entitled to the relief it demands.

In a local government fund appeal, the BTA conducts a *de novo* hearing and may modify a budget commission's action. See R.C. 5705.37. The BTA must make the same type of allocation determination the budget commission was required to make. *Lake Cty. Budget Comm. v. Vill. of Willoughby Hills* (1967), 9 Ohio St.2d 108, 113. The Board's allocation findings replace those of the commission. *Id.* The BTA's allocation decision must be based upon some ascertainable and reasonable standard and upon the evidence presented. *Cleveland v. Cuyahoga*

*Cty. Budget Comm.* (1976), 47 Ohio St.2d 27, 31. Where a complaining subdivision does not offer proof to support its reallocation claims – by direct testimony before the Board or by stipulation, deposition, or otherwise – the subdivision cannot complain that the BTA’s decision is unreasonable. *Cuyahoga Cty. v. Cuyahoga Cty. Budget Comm.* (1971), 27 Ohio St.2d 22, 25.

In this case, there is no evidence to support Elyria’s claim that Lorain County was over-allocated. Elyria made no such showing at the January 2006 evidentiary hearing and offers no citation to the record in its brief in this appeal. Neither the BTA nor any court has ever determined that the County was over-allocated. Because there is no evidence of or finding that Lorain County was over-allocated in any of the years under appeal, Elyria failed to prove its claim and is not entitled to receive a reallocation from the County.

In fact, the evidence proves that Lorain County could not have been over-allocated for any of the years under appeal. Under the 2004 Formula, only the City of Lorain received an increased LGF allocation, going from 16.82% to 20.212%. Appellants’ Appx. at p. 195. The notices of appeal even refer to “the increased allocation to Lorain.” *Id.* at pp. 55, 75, 101. Lorain County bore one-half of the expense of Lorain’s increase; the 2004 Formula reduced the County’s share from 50% under the previous allocation method to 48.302%. *Id.* at p. 213. The County also paid Lorain the \$500,000 to settle the prior year’s appeal, even though the County was never a party to that appeal. *Id.* at p. 195. ***Because Lorain County’s allocation went down, the County could not have been over-allocated using the 2004 Formula instead of the prior allocation method.***

Pursuant to the allocation Elyria was asking the BTA to make, it was logically impossible not to have specified Lorain – rather than the County – as having been over-allocated. Elyria excuses this decision, arguing that it “believed” Lorain’s allocation under the 2004 Formula was “unalterably fixed” and that it was foreclosed from attacking it. Appellants’ Br. 7-8. Elyria

never explains how the share of the one subdivision to gain could be “fixed” other than to just say that the settlement of Lorain’s appeal – the same settlement that led to the adoption of the 2004 Formula – could not be contested. *Id.* at 8.

This assertion demonstrates the intellectual fallacy of Elyria’s position. The notices of appeal sought to throw out the 2004 Formula. If Elyria were to obtain the relief it seeks – a finding that R.C. 5747.55(D) renders the 2004 Formula invalid – then Lorain’s increased allocation could not have been “unalterably fixed” because the formula “fixing” that increase would be unlawful. If the formula was not valid, no allocation under it could be valid. It is absurd for Elyria to suggest that it thought the 2004 Formula did not bind it or the County, while claiming it “believed” it could not “relitigate” Lorain’s allocation under that same formula.

Even Elyria’s interpretation of R.C. 5747.55(D) would lead to the inescapable legal conclusion that Lorain County could not have been over-allocated. According to Elyria, section 5747.55(D) commands that an alternative formula that grew out of a settlement of a prior year’s appeal cannot reduce the share, in any future year, of a subdivision that was not a party to the prior appeal. Lorain County was not a party to Lorain’s 2003 appeal. Appellants’ Appx. p. 155. If Elyria’s analysis is correct, the 2004 Formula cannot, therefore, reduce Lorain County’s percentage share of the LGF. Since the 2004 Formula does just that – as even Elyria concedes – the County cannot have been over-allocated for any of the years under appeal.<sup>6</sup>

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<sup>6</sup> In *Elyria*, this Court characterized Elyria’s argument as one in which the County contractually bound itself to pay all of the increased amounts that went to Lorain. 2008-Ohio-940 at ¶24. There is no basis whatsoever for this speculation. Elyria has never argued that the 2003 appeal settlement constituted a contract, by Lorain County or any other subdivision. The evidence showed that all of the subdivisions in the county – including Appellants – participated in the negotiations that led to the 2004 Formula, and all of the subdivisions had the opportunity to vote for or against the Formula. As the two entities with absolute veto power under R.C. 5747.53, it was logical for the initial concept that led to the 2004 Formula to be worked out between Lorain and the County; after all, no alternative formula could pass without their consent.

Elyria is playing games with these notices of appeal. Using Elyria's legal theory and its numbers, Lorain County could not have been "identified" as an over-allocated subdivision, only Lorain could have been. The 2007 notice of appeal epitomizes the games Elyria plays with the targets of its appeals. Appellees' Supplement pp. 36-53.<sup>7</sup> It contains the same attack on the 2004 Formula as the prior notices of appeal. However, although nothing else changed, and although Elyria alleges again in its brief to this Court that it could not challenge Lorain's 2004 Formula allocation, this time Elyria does just that, claiming that Lorain was over-allocated and that the County was properly allocated. Elyria's flip-flop in its later notice of appeal proves that the decision to exclude Lorain as an over-allocated subdivision in its previous filings was calculated, deliberate, and disingenuous.

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But the remaining subdivisions had input into the discussions and a majority of them approved what became the 2004 Formula. In no way shape or form can the 2003 settlement or the 2004 Formula be considered a contract between Lorain and Lorain County.

<sup>7</sup> This court can take judicial notice of the 2007 filing because it is a related proceeding, the statements made in the filing are offered here not for their truth but for the fact they were made, and the fact of the filing is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. *See* Evid. R. 201; *Conopco, Inc. v. Roll Int'l.* (C.A.2, 2000), 231 F.3d 82, n. 3 (taking judicial notice of a notice of appeal in a separate case.)

**APPELLEE'S PROPOSITION OF LAW NO. 5:**

**WHERE APPELLANTS ASSERTED A CLAIM IN THE NOTICE OF APPEAL BUT NEVER PURSUED THE CLAIM BEFORE THE BTA AND OFFERED NO EVIDENCE TO SUPPORT IT, THEY ARE NOT ENTITLED TO RELIEF ON THAT CLAIM.**

In its second proposition of law, Elyria demands that this Court reduce Lorain County's 2006 LGF allocation to 30%, claiming that R.C. 5747.51(H) compels this result because the percentage of the county population residing in municipal corporations surpassed 81% in that year. However, Elyria is not entitled to any relief on the 2006 population issue. Elyria waived the claim because it never pursued it in the BTA. Moreover, the Supreme Court cannot make the factual finding Elyria requests because the record is silent on the municipal population percentages for 2006 or any other year. Elyria offered no such evidence.

The 2006 notice of appeal, filed on September 22, 2005 alleged that changes in the municipal population percentages should have reduced the County's maximum share of the 2006 LGF from 50% to 30%. But that was the last time the issue was mentioned, at least until Elyria filed this Supreme Court appeal. The BTA conducted an evidentiary hearing on January 18, 2006. Elyria offered no population evidence, nor did it mention the issue in its post-hearing briefing. After this Court reversed and remanded the BTA's jurisdiction decision on March 12, 2008, the BTA invited submissions from all parties. Elyria remained silent on its population claim. It never briefed the question, never asked the BTA to hold a new hearing on the issue, never requested the BTA reopen the previous hearing record, and never offered any evidence to supplement the case record. In short, in the four-and-one-half years between filing the 2006 notice of appeal and appealing to this Court on March 31, 2010, Elyria did nothing to adjudicate the population claim.

Because Elyria never litigated the population issue in the BTA, it waived that claim. It is a fundamental rule of Ohio law that a reviewing court will disregard assignments of error that

were not brought to the trial court's attention. *LeFort v. Century 21-Maitland Realty Co.* (1987), 32 Ohio St.3d 121, 123 (appellate court will not consider any error which a party could have brought to trial court's attention at a time when that error could have been corrected or avoided by the trial court); *Stores Realty Co. v. Cleveland Bd. of Bldg. Standards and Bldg. Appeals* (1975), 41 Ohio St.2d 41 (same); *Republic Steel Corp. v. Bd. of Rev. of Cuyahoga Cty.* (1963), 175 Ohio St. 179 (issues not tried in the lower tribunal cannot be raised for the first time on appeal); *State ex rel. Gutierrez v. Trumbull Cty. Bd. of Elections* (1992), 65 Ohio St.3d 175, 176 (appellant cannot present new arguments for the first time on appeal); *BancOhio Nat'l Bank v. Abbey Lane Ltd.* (1984), 13 Ohio App.3d 446, 448 (questions not raised and determined in the court below cannot be considered by a reviewing court).

The reasons behind this rule are simple and sound. The Supreme Court is a reviewing court, not a court of first impression. In the judicial system's organizational structure, trial courts, not appellate courts, make factual findings necessary to determine legal issues. Where the issues a party attempts to raise for the first time on appeal could have been pursued during the proceedings below, there is no excuse for that party's failure to address them there. Those issues are waived.

The fact that Appellants included the population claim in the 2006 notice of appeal does not change the conclusion that they have since waived it. Ohio's courts have repeatedly held that a party who raises an issue in its complaint, then neither argues the issue in any briefing nor presents evidence on that issue in the trial court, has waived the issue and may not argue it on appeal. *Starks v. Wheeling Twp. Trustees*, 5th Dist. Nos. 2008 CA 000037, 2009 CA 000003, 2009-Ohio-4827, at ¶35 (although plaintiff asserted claim in his complaint, he never again addressed it before the trial court. "We find the matter was not raised before the trial court and cannot now be raised for the first time on appeal."); *Marusa v. Brunswick*, 8th Dist. No. Civ.A.

04CA0038-M, 2005-Ohio-1135, at ¶36-38 (finding claim could not be raised on appeal because “[n]ot only is Appellant’s claim [of emotional distress] wholly unsubstantiated by any reference to evidence in the record, he has failed to argue such claim beyond his complaint.”); *McCartney v. Universal Electric Power, Corp.*, 9th Dist. No. 21643, 2004-Ohio-959, at ¶18, citing *LeFort*, 32 Ohio St.3d at 123, *supra* (attorneys fees issue waived on appeal where appellee requested award of fees in his complaint but did not present any evidence regarding fees, request a separate hearing on the matter, or otherwise raise the issue in the trial court); *Abood v. Nemer* (1998), 128 Ohio App.3d 151, 159 (plaintiff asserted statutory claims in complaint, but abandoned those claims by failing to pursue them or present evidence in the trial court; therefore, she could not assert them on appeal). Because Elyria never pursued the population claim beyond mentioning it in the 2006 notice of appeal to the BTA, it has waived that issue for this appeal.

Even if it hadn’t waived the population issue, Elyria offered no evidence to support the claim. Again, Ohio law is clear. Mere assertions in a complaint are not evidence that can justify a finding on a party’s behalf. *Marusa*, 2005-Ohio-1135, at ¶36-38 (without evidence, self-serving claim that employee suffered severe emotional distress was insufficient to establish claim); *RWS Bldg. Co. v. Freeman*, 4th Dist. No. 04CA40, 2005-Ohio-6665, at ¶42 (party’s self-serving and otherwise unsupported statements could not create an issue for trial); *Davis v. City of Cleveland*, 8th Dist. No. 83665, 2004-Ohio-6621, at ¶23-25 (same); *Himes v. City of Youngstown* (Mar. 31, 1992), 7th Dist. No. 90 C.A. 203, 1992 Ohio App. LEXIS 1844, at \*5 (allegations in complaint, even combined with unsupported affidavits restating those allegations are not proof of appellant’s claim); *Schaffer v. Donegan* (1990), 66 Ohio App.3d 528, 537 (record must show not only allegation in the complaint but evidence supporting the allegation).

Elyria makes various assertions about municipal population percentages, but cites nothing in the record to support these assertions. The reason is simple, there is no evidence. As

previously pointed out, Elyria never addressed the population claim at any stage of the BTA proceedings. It thus comes as no surprise that Elyria did not submit any evidence on that issue. Where there is no evidence, this Court cannot make the finding of fact that Lorain County's 2006 LGF percentage should be reduced because of changes in the percentage of the county's population residing in municipal corporations.

### **ARGUMENT IN SUPPORT OF CROSS-APPEAL**

#### **CROSS-APPELLANT'S PROPOSITION OF LAW NO. 1:**

**IN A LOCAL GOVERNMENT FUND APPEAL, THE BTA MUST STRICTLY COMPLY WITH THE STATUTORY LIMITATIONS CONTAINED IN REVISED CODE CHAPTER 5747. THE BTA MAY NOT ALLOCATE THE LOCAL GOVERNMENT FUND IN ANY MANNER THAT IS NOT SPECIFICALLY PERMITTED BY R.C. SECTIONS 5747.51, 5747.53, AND 5747.55.**

The BTA correctly found that the subdivisions in Lorain County properly and timely adopted an alternative method to govern the 2004 LGF allocation. It also correctly concluded that R.C. 5747.55(D) cannot be re-interpreted to impair the power of those subdivisions to adopt an alternative formula for future years, or to guarantee Elyria a specific percentage allocation for all time. But the Board erred when it re-characterized a portion of Lorain County's **2004** allocation to, in effect, be treated as a reallocation of **2003** funds that had been the subject of a prior appeal. Because the BTA acted unreasonably and unlawfully in doing so, this portion of its decision must be reversed.

The same analysis that demonstrated the fallacy of Elyria's first proposition of law also compels the conclusion that the BTA erred in reallocating the \$250,000 component of the 2004 Formula. By its terms, section 5747.55(D) limits the BTA's ability to reallocate exclusively to *a particular year's* local government fund as a remedy in an appeal of *that particular year*. See Appellee's Proposition of Law No. 3, *supra*. The statute does not authorize the Board to transform an allocation for a later year's funds into a re-allocation of a prior year's funds. The

BTA recognized as much when it decided, first, that section 5747.55(D) provides only that a subdivision's allocation will not change for the year in which that subdivision did not participate in the appeal and, second, that the statute does not guarantee Elyria's distribution in subsequent years. BTA Decision at p. 8 (Appellants' Appx. p. 30).

But the Board then did exactly what it had just ruled R.C. 5747.55(D) cannot do. It used the fact that Elyria was not a party *to the 2003 allocation appeal* – just as Lorain County was not a party to that appeal – and applied section 5747.55(D) *to the 2004 allocation*. It did not find that Elyria's 2003 allocation had been reduced; it could not, because Elyria received every penny of its 2003 funding. Instead, the BTA treated the allocation of the 2004 LGF as if it were a redistribution of the 2003 funding. There was no lawful basis for this decision.

Not only did the BTA ignore the language of section 5747.55(D) that confirms that the statute is restricted to appellate redistribution for a specific year only, it imposed a limitation that does not exist in R.C. 5747.53 on the subdivisions' ability to craft an alternative formula for distributing the LGF. *See* Appellee's Proposition of Law No. 3, *supra*. And it did so after having just explained that it could not impose such a limitation. BTA Decision at p. 9 (Appellants' Appx. p. 31). In doing so, the Board arbitrarily created a new "method" of allocating the LGF that is neither statutory formula nor an alternative method, and that R.C., 5747.51 precludes. *See* Appellee's Proposition of Law No. 1, *supra*. It also ignored the clear mandate that the LGF *shall* be allocated pursuant to the 2004 Formula where such an alternative method has been properly adopted. *See* Appellee's Proposition of Law No. 2, *supra*. The BTA improperly fashioned its own "method" of allocation, one that was never proposed, considered, or approved pursuant to section 5747.53.

Because the BTA determined that the 2004 Formula for allocating the LGF was valid, that the 2004 Formula governed the allocation for the LGF years under review, that the \$250,000

allocated to Lorain County from the 2004 LGF was a factor in the structure of the alternative method, and where Elyria received the full amount of its prior year's LGF allocation, the Board erred in finding that the allocation of the \$250,000 violated R.C. 5747.55(D). The BTA's treatment of this component of the 2004 Formula violates the statutory pronouncements in R.C. 5747.51 and 5747.53, is unreasonable and unlawful, and must be reversed.

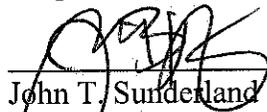
### **CONCLUSION**

Appellants persist in trying to get something the law does not allow: to impose their own extra-statutory method of allocating the LGF upon the subdivisions of Lorain County. There are only statutory formula allocations or alternative formula allocations pursuant to a timely adopted alternative method. The Revised Code permits no other "methods." Where an alternative formula has been properly adopted, it governs. Because Appellants have abandoned their challenge to the adoption of the 2004 Formula they, like every other subdivision in the county, must accept this formula in its entirety. The 2004 Formula was developed and adopted by the county subdivisions. It therefore must control the 2004, 2005, and 2006 LGF allocations. Section 5747.55(D) is limited to appellate reallocation of the 2003 year's funds, is irrelevant to the allocation for any later year, and cannot impose an otherwise unarticulated limitation on the power of county subdivisions to adopt alternative methods of allocating the local government fund in any other year. Finally, whatever the decision on the application of the 2004 Formula to these appeals, Lorain County cannot be an over-allocated subdivision and cannot be required to pay money to these Appellants, whether using Appellants new-found population percentage argument or any other theory.

Therefore, the BTA's decision upholding the 2004 Formula for the 2004, 2005, and 2006 allocations must be affirmed. Appellants are not entitled to the specific relief reflected by the figures in Exhibit G of the notices of appeal. However, because the BTA's decision concerning

the \$250,000 component of the 2004 allocation is unreasonable and unlawful, it must be reversed.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Merit Brief of Appellee and Cross-Appellant Lorain County was served by email, pursuant to S. Ct. Prac. R. 14.2(B)(1), upon the following on July 26, 2010:

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**SUPPLEMENT TO THE MERIT BRIEF OF APPELLEE  
AND CROSS-APPELLANT LORAIN COUNTY**

IN THE SUPREME COURT OF OHIO

City of Elyria, et al.,	)	
	)	
Appellants,	)	Case Nos. 06-2293
	)	06-2389
v.	)	06-2390
	)	
Lorain County Budget Commission, et al.,	)	On Appeal From The
	)	Ohio Board of Tax Appeals
Appellees.	)	

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RECORD SUPPLEMENT OF APPELLEES LORAIN COUNTY, LORAIN COUNTY  
BOARD OF COUNTY COMMISSIONERS, CITY OF LORAIN AND  
LORAIN COUNTY BUDGET COMMISSION

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## CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Record Supplement of Appellees Lorain County, Lorain County Board of County Commissioners, City of Lorain and Lorain County Budget Commission has been sent electronically to appellants and by regular U.S. mail to the following this 13<sup>th</sup> day of March, 2007:

Terry S. (Pete) Shilling, Law Director Michelle D. Nedwick City of Elyria, Ohio 131 Court Street, Suite 201 Elyria, Ohio 44035 <a href="mailto:tshilling@cityofelyria.org">tshilling@cityofelyria.org</a> 440-326-1464 440-326-1466 (fax)	Kenneth S. Stumphauzer, Law Director Abraham Lieberman, Assistant Law Director City of Amherst 5455 Detroit Road Sheffield Village, Ohio 44054	LaGrange Village c/o Rita K. Ruot, Clerk-Treasurer P.O. Box 597 LaGrange, Ohio 44050
Eric H. Zagrans The Zagrans Law Firm 474 Overbrook Road Elyria, Ohio 44053 <a href="mailto:eric@zagrans.com">eric@zagrans.com</a> 440-452-7100 202-261-0046 (fax)	John A. Gasior, Law Director City of Avon 36815 Detroit Road Avon, Ohio 44011	Rochester Village c/o Laura Brady, Clerk 52185 Griggs Road Wellington, Ohio 44090
Geoffrey R. Smith, Law Director City of Avon Lake, Ohio 124 Middle Avenue, Suite 800 Elyria, Ohio 44035 <a href="mailto:grsmith@geoffreyrsmithlaw.com">grsmith@geoffreyrsmithlaw.com</a> 440-323-2201 440-930-4107 (fax)	Sheffield Village Luke F. McConville Waldheger Coyne Gemini Tower I, Suite 550 1991 Crocker Road Cleveland, Ohio 44145	South Amherst Village c/o Janice J. Szmania, Clerk 103 West Main Street South Amherst, Ohio 44011
Paul D. Eklund Lorain County Met. Park District Davis & Young 1700 Midland Building 101 Prospect Avenue, West Cleveland, Ohio 44115-1027 <a href="mailto:peklund@davisyoung.com">peklund@davisyoung.com</a>	City of Sheffield Lake c/o Stanley Zaborski, Treasurer 609 Harris Road Sheffield Lake, Ohio 44054	Wellington Village c/o Karen J. Webb, Clerk Willard Memorial Square Wellington, Ohio 44090
Gerald A. Innes Assistant Prosecuting Attorney Lorain County Justice Center 225 Court Street, 3rd Floor Elyria, Ohio 44035 <a href="mailto:jerry.innes@lcprosecutor.org">jerry.innes@lcprosecutor.org</a>	City of Vermilion c/o Lawrence Rush, Finance Dir. 5511 Liberty Avenue Vermilion, Ohio 44089	Brighton Township c/o Marilyn McClellan, Clerk 19996 Baird Road Wellington, Ohio 44090
City of Lorain John R. Varanese, Esq. 85 East Gay Street, Suite 1000 Columbus, OH 43215-3118	Grafton Village c/o Linda S. Bales, Clerk 960 Main Street Grafton, Ohio 44044	Brownhelm Township c/o Marsha Funk, Clerk 1940 N. Ridge Road Vermilion, Ohio 44089
City of Oberlin Eric R. Severs, Law Director 5 South Main Street Oberlin, Ohio 44074	Kipton Village c/o Albert Buck, Jr., Clerk 42 Court Kipton, Ohio 44049	Camden Township c/o Cheryl Parrish, Clerk 15374 Baird Road Oberlin, Ohio 44074-9696

Carlisle Township  
c/o Barbara VanMeter, Clerk  
11969 LaGrange Road  
LaGrange, Ohio 44050

Elyria Township  
c/o Barbara Baker, Clerk  
41416 Griswold Road  
Elyria, Ohio 44035

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

Penfield Township  
c/o Eleanor Gnadst, Clerk  
42760 Peck Wadsworth Road  
Wellington, Ohio 44090

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

Richard Levin, Tax Commissioner  
Director of Taxation  
30 East Broad Street  
16th Floor  
Columbus, Ohio 43215

Columbia Township  
c/o Mary Lou Berger, Clerk  
25496 Royaltown Road  
P.O. Box 819  
Columbia Station, Ohio 44028

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

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

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

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

Marc Dann, Esq.  
John K. McManus, Esq.  
Office of Attorney General  
30 East Broad Street  
16th Floor  
Columbus, Ohio 43215

Eaton Township  
c/o Linda Spitzer, Clerk  
12043 Avon Belden Road  
Grafton, Ohio 44044

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

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

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



**BOARD OF TAX APPEALS  
STATE OF OHIO**

CITY OF ELYRIA, <i>et al.</i> ,	)	CASE NO. 2003-T-1533
	)	
Appellants,	)	(Lorain County Budget Commission-
	)	LGF/RAF)
vs.	)	
	)	
LORAIN COUNTY BUDGET	)	Steven L. Smiseck
COMMISSION, <i>et al.</i> ,	)	Hearing Examiner
	)	
Appellees.	)	

**ANSWERS AND OBJECTIONS OF THE CITY OF AMHERST TOWNSHIP, OHIO  
TO APPELLEES' FIRST SET OF REQUESTS FOR ADMISSIONS,  
INTERROGATORIES AND REQUESTS FOR PRODUCTION**

Pursuant to Rule 5717-11 of the Board of Tax Appeals, Appellant, the Township of Amherst, Ohio ("Amherst Township"), hereby submits its responses, subject to the general and specific objections set forth below, to Appellees' First Set of Interrogatories, Requests for Admissions and Requests for Production of Documents as follows:

**General Objections**

1. Amherst Township objects to the Requests insofar as they seek information that is protected from discovery by the attorney-client privilege, the work product doctrine or any other privileges or immunities protecting confidential information from discovery.
2. Amherst Township objects to the Requests insofar as they set forth pure questions of law that it does not possess the legal expertise to answer. To the extent the Requests seek answers to pure questions of law that have been the subject of consultation between Amherst Township and counsel or of contemplation and/or research by counsel, Amherst Township

Document Request No. 8

Produce all documents used to calculate the figures in column "(2)" of Part I and II of Exhibit G attached to your Notice of Appeal in this case.

Response

See the exhibits attached to Notice of Appeal in Case No. 02-T-1865.

Request for Admission No. 9

Admit that the Budget Commission allocated the 2003 Undivided Local Government Fund and the 2003 Undivided Local Government Revenue Assistance Fund (collectively, the 2003 LGF/RAF") according to an alternative method (the "2003 Alternative Method").

Response

Amherst Township admits that the funds were allocated.

Document Request No. 9

Produce all documents reflecting the method the Budget Commission used to allocate the 2003 LGF/RAF.

Response

See Response to Document Request No. 8.

Request for Admission No. 10

Admit that you received your full share of the 2003 LGF/RAF.

Response

Amherst Township admits that it received its allocation of 2003 LGF/RAF; however, due to the settlement in Case No. 02-T-1865 to which neither Amherst Township or any other Appellant was a party, a portion of the 2003 LGF/RAF funds received were effectively taken back in 2004.

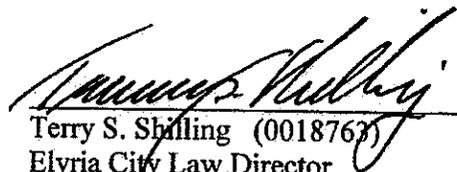
Document Request No. 15

Produce copies of all exhibits you intend to use at the hearing of the above captioned matter.

Response

Amherst Township has not yet identified the exhibits or demonstrative evidence it expects to introduce into evidence at the hearing in this matter. This response will be seasonably supplemented, pursuant to Rule 26(E) of the Ohio Rules of Civil Procedure, after such exhibits and/or demonstrative evidence have been determined.

As to Objections:



Terry S. Shilling (0018763)  
Elyria City Law Director  
131 Court Street  
Elyria, Ohio 44035  
(440) 326-1464 (telephone)  
(440) 326-1466 (facsimile)

Attorney for Appellant,  
Amherst Township, Ohio

July 8, 2005

OHIO BOARD OF TAX APPEALS

CITY OF ELYRIA, ET AL

CASE NO. 2003-T-1533

Appellants

vs.

LORAIN COUNTY BUDGET COMMISSION,

AMHERST TOWNSHIP'S  
SUPPLEMENTAL RESPONSE TO  
LORAIN COUNTY COMMISSIONERS'  
FIRST SET OF REQUEST FOR  
ADMISSIONS, INTERROGATORIES  
AND REQUEST FOR PRODUCTION OF  
DOCUMENTS TO CITY OF ELYRIA  
PURSUANT TO THE OHIO BOARD OF  
TAX APPEALS' ORDER COMPELLING  
DISCOVERY IN PART AND DENYING  
SANCTIONS, ENTERED JUNE 17, 2005

Appellees

INTERROGATORY NO. 3:

The Appellant Amherst Township's denial of request for admission No. 5 is based upon the following:

1) ORC Section 305.09 provides that all proceedings of the Board of County Commissioners shall be public . . . , and, as far as possible, shall be in conformity with the Rules of Parliamentary Law. Parliamentary Law is determined by Robert's Rules of Order, and for this response, two sections of Article VI of Roberts Rules of Order Revised (1979 Edition) are pertinent, Section 36 Reconsideration and Section 37 Rescind.

2) On September 4, 2003, the Lorain County Commissioners voted on Resolution No. 03-657 which in effect was a reconsideration of: adopting and approving alternative method for appropriating the Local Government Undivided Local Government Fund pursuant to Section

#### REQUEST FOR ADMISSIONS NO. 9

Amherst Township, upon further reflection as to exactly what Request for Admission No. 9 is asking and that such actually relates to 2003, the year appealed by the City of Lorain, and not a year appealed by Amherst Township, revises its answer as follows: Amherst Township admits that the 2003 LGF/RAF were allocated according to an alternative method.

#### DOCUMENT REQUEST NO. 9

Although Amherst Township is not able to read the mind of the Lorain County Commissioners as to specifically what all documents they were referring to in Document Request No. 9, Amherst Township hereby submits those documents in its possession which to the best of its knowledge reflect the method the Lorain County Budget Commission used to allocate the 2003 LGF/RAF.

#### INTERROGATORY NO. 14

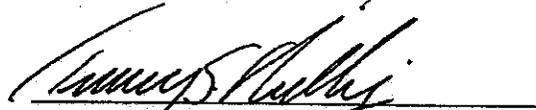
As detailed below, there is a substantial amount of money that Amherst Township will not receive as a result of the implementation of the "2004 alternative method" of the 2003 LGF/RAF. By adopting the settlement of the Lorain case, which is the so-called "2004 alternative method", the Lorain County Budget Commission required Amherst Township to "carve out" from Amherst Township's share of the 2004 LGF the sum of Three Thousand Eight Hundred Twelve Dollars and Fifty Cents (\$3,812.50) from the amount Amherst Township received of the 2003 LGF/RAF and pay that amount to Lorain County. Although directly Amherst Township was not required to pay back any of its 2003 LGF/RAF, Amherst Township's allocation of the 2004 LGF/RAF was reduced to reflect the settlement of the 2003 allocation of the LGF/RAF, thereby indirectly reducing Amherst Township's 2003 LGF/RAF and that amount is detailed as follows: The carved back portion of the amount paid in 2003 - \$3,812.50; Reduction in the 2004 LGF allocation as a result of the implementation of the settlement and the reduction in Amherst Township's percentage - \$4,945.12; Reduction in the 2004 RAF as a result of the

implementation of the settlement and the reduction of Amherst Township's percentage - \$471.16.

Total loss of revenue to Amherst Township through the implementation of the Lorain settlement by the "2004 alternative method" for 2004 - \$9,228.78. Please note two things regarding this:

(1) this amount represents only the first year of the implementation of the settlement; and, (2) since the settlement has no time limit except for the carved back portion of \$3,812.50, the remaining (\$5,416.28) loss will continue for each year thereafter resulting in the potential loss of thousands of dollars to Amherst Township in violation of ORC Section 5747.55 (D) as has been previously stated. Amherst Township cannot emphasize enough it was not a party to the Lorain appeal which resulted in the change of the 2003 LGF/RAF allocation and in the future for the Amherst Township.

Respectfully submitted on behalf of the  
Appellant, Amherst Township

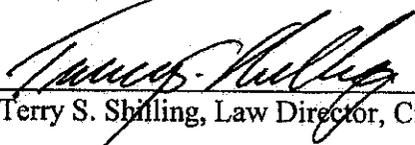


Terry S. Shilling #0018763  
Law Director, City of Elyria  
131 Court Street  
Elyria, Ohio 44035  
Telephone: (440) 326-1464

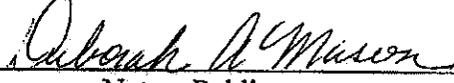
**VERIFICATION**

State of Ohio            )  
                                  ) ss  
County of Lorain        )

I, Terry S. Shilling, on behalf of Amherst Township, Ohio, being first duly sworn according to law, depose and state that the Responses to the forgoing Discovery Request are true to the best of my knowledge, information and belief.

  
Terry S. Shilling, Law Director, City of Elyria

SWORN TO and subscribed before me this 8<sup>th</sup> day of July, 2005.

  
Notary Public

DEBORAH A MASON  
Notary Public State of Ohio  
My Commission Expires 12-13-2007

**BOARD OF TAX APPEALS  
STATE OF OHIO**

CITY OF ELYRIA, <i>et al.</i> ,	)	CASE NO. 2003-T-1533
	)	
Appellants,	)	(Lorain County Budget Commission-
	)	LGF/RAF)
vs.	)	
	)	
LORAIN COUNTY BUDGET	)	Steven L. Smiseck
COMMISSION, <i>et al.</i> ,	)	Hearing Examiner
	)	
Appellees.	)	

**ANSWERS AND OBJECTIONS OF THE CITY OF NORTH RIDGEVILLE, OHIO  
TO APPELLEES' FIRST SET OF REQUESTS FOR ADMISSIONS,  
INTERROGATORIES AND REQUESTS FOR PRODUCTION**

Pursuant to Rule 5717-11 of the Board of Tax Appeals, Appellant, the City of North Ridgeville, Ohio ("North Ridgeville"), hereby submits its responses, subject to the general and specific objections set forth below, to Appellees' First Set of Interrogatories, Requests for Admissions and Requests for Production of Documents as follows:

**General Objections**

1. North Ridgeville objects to the Requests insofar as they seek information that is protected from discovery by the attorney-client privilege, the work product doctrine or any other privileges or immunities protecting confidential information from discovery.
  
2. North Ridgeville objects to the Requests insofar as they set forth pure questions of law that it does not possess the legal expertise to answer. To the extent the Requests seek answers to pure questions of law that have been the subject of consultation between North Ridgeville and counsel or of contemplation and/or research by counsel, North Ridgeville objects

Document Request No. 8

Produce all documents used to calculate the figures in column "(2)" of Part I and II of Exhibit G attached to your Notice of Appeal in this case.

Response

*See the exhibits attached to Notice of Appeal in Case No. 02-T-1865.*

Request for Admission No. 9

Admit that the Budget Commission allocated the 2003 Undivided Local Government Fund and the 2003 Undivided Local Government Revenue Assistance Fund (collectively, the 2003 LGF/RAF") according to an alternative method (the "2003 Alternative Method").

Response

North Ridgeville admits that the funds were allocated.

Document Request No. 9

Produce all documents reflecting the method the Budget Commission used to allocate the 2003 LGF/RAF.

Response

*See Response to Document Request No. 8.*

Request for Admission No. 10

Admit that you received your full share of the 2003 LGF/RAF.

Response

North Ridgeville admits that it received its allocation of 2003 LGF/RAF; however, due to the settlement in Case No. 02-T-1865 to which neither North Ridgeville or any other Appellant was a party, a portion of the 2003 LGF/RAF funds received were effectively taken back in 2004.

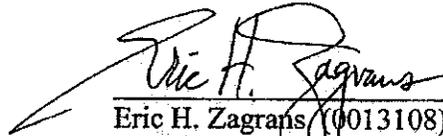
Document Request No. 15

Produce copies of all exhibits you intend to use at the hearing of the above-captioned matter.

Response

North Ridgeville has not yet identified the exhibits or demonstrative evidence it expects to introduce into evidence at the hearing in this matter. This response will be seasonably supplemented, pursuant to Rule 26(E) of the Ohio Rules of Civil Procedure, after such exhibits and/or demonstrative evidence have been determined.

As to Objections:



---

Eric H. Zagrans (0013108)  
THE ZAGRANS LAW FIRM CO., LPA  
5338 Meadow Lane Court  
Elyria, Ohio 44035-1469  
(440) 934-7000 (telephone)  
(440) 934-7001 (facsimile)

Attorney for Appellant,  
City of North Ridgeville, Ohio

OHIO BOARD OF TAX APPEALS

CITY OF ELYRIA, <i>et al.</i> ,	)	CASE NO. 2003-T-1533
	)	
Appellants,	)	(Lorain County Budget Commission-
	)	LGF/RAF)
vs.	)	
	)	
LORAIN COUNTY BUDGET	)	Steven L. Smiseck
COMMISSION, <i>et al.</i> ,	)	Hearing Examiner
	)	
Appellees.	)	

**SUPPLEMENTAL ANSWERS AND OBJECTIONS OF THE CITY OF NORTH RIDGEVILLE, OHIO, TO APPELLEES' FIRST SET OF REQUESTS FOR ADMISSIONS, INTERROGATORIES AND REQUESTS FOR PRODUCTION**

Pursuant to the Order entered by the Ohio Board of Tax Appeals on June 17, 2005, and pursuant to Board Rule 5717-11, Appellant, the City of North Ridgeville, Ohio ("North Ridgeville"), hereby submits its Supplemental Responses, subject to the general and specific objections set forth below, to Appellees' First Set of Interrogatories, Requests for Admissions and Requests for Production of Documents as follows:

**General Objections**

1. North Ridgeville objects to the Requests insofar as they seek information that is protected from discovery by the attorney-client privilege, the work product doctrine or any other privileges or immunities protecting confidential information from discovery.

2. North Ridgeville objects to the Requests insofar as they set forth pure questions of law that it does not possess the legal expertise to answer. To the extent the Requests seek answers to pure questions of law that have been the subject of consultation between North Ridgeville and counsel or of contemplation and/or research by counsel, North Ridgeville objects to such Requests on the grounds of attorney-client privilege and the attorney work product

Request for Admission No. 9

Admit that the Budget Commission allocated the 2003 Undivided Local Government Fund and the 2003 Undivided Local Government Revenue Assistance Fund (collectively, the 2003 LGF/RAF") according to an alternative method (the "2003 Alternative Method").

Response

North Ridgeville admits that the 2003 LGF/RAF were allocated according to an alternative method.

Document Request No. 9

Produce all documents reflecting the method the Budget Commission used to allocate the 2003 LGF/RAF.

Response

North Ridgeville states that it has no responsive documents in its possession or under its control other than copies of the documents produced by the City of Elyria in its Supplemental Response to this Request for Production of Documents.

Interrogatory No. 14

If your response to the preceding request for admission is not an unqualified admission, explain how you believe the 2004 Alternative Method impacted your share of the 2003 LGF/RAF.

Response

There are substantial sums of money which North Ridgeville will not receive as the result of implementing and applying the 2004 Alternative Method to North Ridgeville's share of the 2003 LGF/RAF. By adopting the settlement of the City of Lorain's appeal to the Board, the so-called 2004 Alternative Method, the Budget Commission carved out of North Ridgeville's share of the 2004 LGF the sum of Twenty-five Thousand Seven Hundred Ninety Dollars (\$25,790.00) from the amount North Ridgeville was to receive of the 2003 LGF/RAF, and required this sum to be paid back to Lorain County, supposedly as North Ridgeville's share of or contribution to the \$250,000 redistribution of the 2003 funds to the City of Lorain as part of the settlement. Even though North Ridgeville was not required to pay back any of its 2003 LGF/RAF, its allocation of the 2004 LGF/RAF was reduced to reflect its supposed pay back of the 2003 funds. Thus, North Ridgeville's 2003 LGF/RAF was indirectly, but nevertheless actually, reduced as follows:

Carve back of amounts paid in 2003:	\$ 25,790.00
Reduction in 2004 LGF allocation as the result of	

implementing the settlement and reducing  
North Ridgeville's percentage on an ongoing basis: \$ 28,498.60  
Reduction in 2004 RAF allocation as the result of  
implementing the settlement and reducing  
North Ridgeville's percentage on an ongoing basis: \$ 3,607.64

Total lost revenue to North Ridgeville from implementing  
the settlement with the City of Lorain by use of the  
2004 Alternative Method in 2004 alone: \$ 57,896.24

The foregoing amount of \$57,896.24 represents North Ridgeville's lost LGF and RAF revenues in only the first year of implementation of the settlement. Aside from the initial, one-time carve out of \$25,790, the remaining part of the loss (\$32,106.24) will continue each year after 2004, resulting in the potential loss of hundreds of thousands of dollars to North Ridgeville over time, all as a result of the violation of R.C. 5747.55(D), as previously set forth, because North Ridgeville was not a party to the tax appeal by the City of Lorain, the settlement of which by and among the entities that were parties to the appeal purported to change the 2003 LGF/RAF. Pursuant to R.C. 5747.55(D), that settlement is not valid, binding or effective on a non-party such as North Ridgeville.

Interrogatory No. 18

If your response to the preceding request for admission is not an unqualified admission, explain when and how you believe the 2003 Alternate Method was validly approved.

Response

The 2003 alternative method was implemented through the proper procedure in that a majority of the subdivisions of Lorain County, Lorain County, and the City of Lorain all approved the alternative method that was used in 2003, and such approvals did not contain any time limitations on distributions to start in a year for which the approval time had passed. Under the Supreme Court decision in *Reynoldsburg v. Licking County Budget Commission* (2004), 104 Ohio St.3d 453, 459 at ¶ 28, the adoption of the alternative formula was valid. In *Reynoldsburg*, the Court held that, once an alternative method that has no time limit is approved, it remains in force for ensuing years until it is revised, amended or repealed pursuant to statute. That was the case for the alternative method used by the Budget Commission in 2003.

Request for Admission No. 18

Admit that the Tax Commissioner only extended the Budget Commission's deadline to December 3, 1984 to complete its work allocating the 1985 LGF.

Response

Response

Objection. This requested admission is irrelevant to any claim, defense or issue in this appeal and is not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding and without waiving the foregoing objection, but specifically subject to it, North Ridgeville admits Request for Admission No. 25.

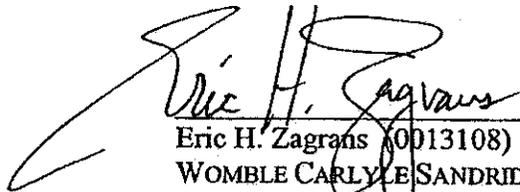
Request for Admission No. 26

Admit that no majority of the Lorain County townships and municipal corporations approved an alternative method for allocating the RAF by September 1, 1989.

Response

Objection. This requested admission is irrelevant to any claim, defense or issue in this appeal and is not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding and without waiving the foregoing objection, but specifically subject to it, North Ridgeville states that, after reasonable inquiry, it lacks sufficient information to either admit or deny the substance of Request for Admission No. 26.

As to Responses and Objections:



Eric H. Zagrans (0013108)  
WOMBLE CARLYLE SANDRIDGE & RICE PLLC  
1401 Eye Street, N/W.  
Washington, D.C. 20005-2225  
(202) 857-4516 (telephone)  
(202) 261-0046 (facsimile)

Attorney for Appellant,  
City of North Ridgeville, Ohio

DISTRICT OF COLUMBIA

) SS:

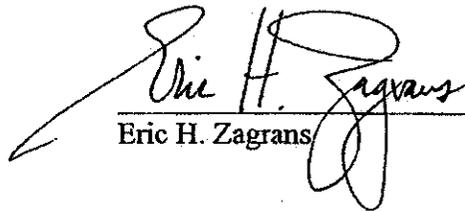
VERIFICATION

I, Eric H. Zagrans, having been first duly sworn according to law, hereby depose, state, declare, attest and aver as follows:

1. I am an attorney at law licensed to practice in the State of Ohio and the District of Columbia. I was formerly the Law Director of the City of North Ridgeville, Ohio, and am its counsel of record in connection with this proceeding. I am aware of the facts set forth herein of my own knowledge and, if called to testify thereto, I could and would competently so testify.

2. I have reviewed the foregoing Supplemental Responses to certain Interrogatories propounded to the City of North Ridgeville, Ohio, and such Supplemental Responses are true to the best of my knowledge, information and belief.

Further Affiant sayeth naught.

  
Eric H. Zagrans

SWORN TO AND SUBSCRIBED before me under the pains and penalties of perjury at Washington, D.C., this 8<sup>th</sup> day of July, 2005.

  
Vickie L. Carter  
Notary Public

**BOARD OF TAX APPEALS  
STATE OF OHIO**

CITY OF ELYRIA, <i>et al.</i> ,	)	CASE NO. 2003-T-1533
	)	
Appellants,	)	(Lorain County Budget Commission-
	)	LGF/RAF)
vs.	)	
	)	
LORAIN COUNTY BUDGET	)	Steven L. Smiseck
COMMISSION, <i>et al.</i> ,	)	Hearing Examiner
	)	
Appellees.	)	

**ANSWERS AND OBJECTIONS OF THE CITY OF ELYRIA, OHIO  
TO APPELLEES' FIRST SET OF REQUESTS FOR ADMISSIONS,  
INTERROGATORIES AND REQUESTS FOR PRODUCTION**

Pursuant to Rule 5717-11 of the Board of Tax Appeals, Appellant, the City of Elyria, Ohio ("Elyria"), hereby submits its responses, subject to the general and specific objections set forth below, to Appellees' First Set of Interrogatories, Requests for Admissions and Requests for Production of Documents as follows:

**General Objections**

1. Elyria objects to the Requests insofar as they seek information that is protected from discovery by the attorney-client privilege, the work product doctrine or any other privileges or immunities protecting confidential information from discovery.

2. Elyria objects to the Requests insofar as they set forth pure questions of law that it does not possess the legal expertise to answer. To the extent the Requests seek answers to pure questions of law that have been the subject of consultation between Elyria and counsel or of contemplation and/or research by counsel, Elyria objects to such Requests on the grounds of

Response

See the exhibits attached to Notice of Appeal in Case No. 02-T-1865.

Request for Admission No. 9

Admit that the Budget Commission allocated the 2003 Undivided Local Government Fund and the 2003 Undivided Local Government Revenue Assistance Fund (collectively, the 2003 LGF/RAF") according to an alternative method (the "2003 Alternative Method").

Response

Elyria admits that the funds were allocated.

Document Request No. 9

Produce all documents reflecting the method the Budget Commission used to allocate the 2003 LGF/RAF.

Response

See Response to Document Request No. 8.

Request for Admission No. 10

Admit that you received your full share of the 2003 LGF/RAF.

Response

Elyria admits that it received its allocation of 2003 LGF/RAF; however, due to the settlement in Case No. 02-T-1865 to which neither Elyria or any other Appellant was a party, a portion of the 2003 LGF/RAF funds received were effectively taken back in 2004.

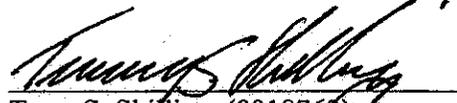
Interrogatory No. 13

If your response to the preceding request for admission is not an unqualified admission, what facts support your refusal to admit that you received your full share of the 2003 LGF/RAF.

Response

Elyria has not yet identified the exhibits or demonstrative evidence it expects to introduce into evidence at the hearing in this matter. This response will be seasonably supplemented, pursuant to Rule 26(E) of the Ohio Rules of Civil Procedure, after such exhibits and/or demonstrative evidence have been determined.

As to Objections:



Terry S. Shilling (0018763)  
LAW DIRECTOR, CITY OF ELYRIA  
328 Broad Street  
Elyria, Ohio 44035  
(440) 323-5647 (telephone)  
(440) 284-0829 (facsimile)

Attorney for Appellant,  
City of Elyria, Ohio

July 8, 2005

OHIO BOARD OF TAX APPEALS

CITY OF ELYRIA, ET AL

CASE NO. 2003-T-1533

Appellants

vs.

LORAIN COUNTY BUDGET COMMISSION,

CITY OF ELYRIA'S SUPPLEMENTAL  
RESPONSE TO LORAIN COUNTY  
COMMISSIONERS' FIRST SET OF  
REQUEST FOR ADMISSIONS,  
INTERROGATORIES AND REQUEST  
FOR PRODUCTION OF DOCUMENTS  
TO CITY OF ELYRIA PURSUANT TO  
THE OHIO BOARD OF TAX APPEALS'  
ORDER COMPELLING DISCOVERY IN  
PART AND DENYING SANCTIONS,  
ENTERED JUNE 17, 2005

Appellees

INTERROGATORY NO. 3:

The Appellant City of Elyria's denial of request for admission No. 5 is based upon the following:

1) ORC Section 305.09 provides that all proceedings of the Board of County Commissioners shall be public . . . , and, as far as possible, shall be in conformity with the Rules of Parliamentary Law. Parliamentary Law is determined by Robert's Rules of Order, and for this response, two sections of Article VI of Roberts Rules of Order Revised (1979 Edition) are pertinent, Section 36 Reconsideration and Section 37 Rescind.

2) On September 4, 2003, the Lorain County Commissioners voted on Resolution No. 03-657 which in effect was a reconsideration of: adopting and approving alternative method for appropriating the Local Government Undivided Local Government Fund pursuant to Section

#### REQUEST FOR ADMISSIONS NO. 9

The City of Elyria, upon further reflection as to exactly what Request for Admission No. 9 is asking and that such actually relates to 2003, the year appealed by the City of Lorain, and not a year appealed by the City of Elyria, revises its answer as follows: Elyria admits that the 2003 LGF/RAF were allocated according to an alternative method.

#### DOCUMENT REQUEST NO. 9

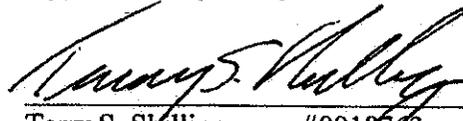
Although the City of Elyria is not able to read the mind of the Lorain County Commissioners as to specifically what all documents they were referring to in Document Request No. 9, the City of Elyria hereby submits those documents in its possession which to the best of its knowledge reflect the method the Lorain County Budget Commission used to allocate the 2003 LGF/RAF.

#### INTERROGATORY NO. 14

As detailed below, there is a substantial amount of money that the City of Elyria will not receive as a result of the implementation of the "2004 alternative method" of the 2003 LGF/RAF. By adopting the settlement of the Lorain case, which is the so-called "2004 alternative method", the Lorain County Budget Commission required the City of Elyria to "carve out" from Elyria's share of the 2004 LGF the sum of Seventy Nine Thousand Seven Hundred Sixty Seven Dollars and Fifty Cents (\$79,767.50) from the amount the City of Elyria received of the 2003 LGF/RAF and pay that amount to Lorain County. Although directly the City of Elyria was not required to pay back any of its 2003 LGF/RAF, the City of Elyria's allocation of the 2004 LGF/RAF was reduced to reflect the settlement of the 2003 allocation of the LGF/RAF, thereby indirectly reducing the City of Elyria's 2003 LGF/RAF and that amount is detailed as follows: The carved back portion of the amount paid in 2003 - \$79,767.50; Reduction in the 2004 LGF allocation as a result of the implementation of the settlement and the reduction in the City of Elyria's percentage - \$90,117.38; Reduction in the 2004 RAF as a result of the implementation of the settlement and

the reduction of the City of Elyria's percentage - \$11,014.06. Total loss of revenue to the City of Elyria through the implementation of the Lorain settlement by the "2004 alternative method" for 2004 - \$180,898.98. Please note two things regarding this: (1) this amount represents only the first year of the implementation of the settlement; and, (2) since the settlement has no time limit except for the carved back portion of \$79,767.50, the remaining (\$101,131.44) loss will continue for each year thereafter resulting in the potential loss of millions of dollars to the City of Elyria in violation of ORC Section 5747.55 (D) as has been previously stated. The City of Elyria cannot emphasize enough it was not a party to the Lorain appeal which resulted in the change of the 2003 LGF/RAF allocation and in the future for the City of Elyria.

Respectfully submitted on behalf of the  
Appellant, City of Elyria

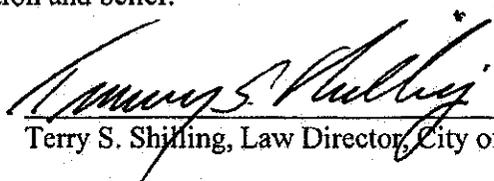


Terry S. Shilling #0018783  
Law Director, City of Elyria  
131 Court Street  
Elyria, Ohio 44035  
Telephone: (440) 326-1464

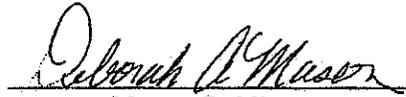
**VERIFICATION**

State of Ohio            )  
                                  ) ss  
County of Lorain        )

I, Terry S. Shilling, on behalf of the City of Elyria, Ohio, being first duly sworn according to law, depose and state that the Responses to the forgoing Discovery Request are true to the best of my knowledge, information and belief.

  
Terry S. Shilling, Law Director, City of Elyria

SWORN TO and subscribed before me this 8<sup>th</sup> day of July, 2005.

  
Notary Public

DEBORAH A MASON  
Notary Public State of Ohio  
My Commission Expires 12-13-2007

**BOARD OF TAX APPEALS  
STATE OF OHIO**

CITY OF ELYRIA, <i>et al.</i> ,	)	CASE NO. 2003-T-1533
	)	
Appellants,	)	(Lorain County Budget Commission-
	)	LGF/RAF)
vs.	)	
	)	
LORAIN COUNTY BUDGET	)	Steven L. Smiseck
COMMISSION, <i>et al.</i> ,	)	Hearing Examiner
	)	
Appellees.	)	

**ANSWERS AND OBJECTIONS OF THE CITY OF AVON LAKE, OHIO  
TO APPELLEES' FIRST SET OF REQUESTS FOR ADMISSIONS,  
INTERROGATORIES AND REQUESTS FOR PRODUCTION**

Pursuant to Rule 5717-11 of the Board of Tax Appeals, Appellant, the City of Avon Lake, Ohio ("Avon Lake"), hereby submits its responses, subject to the general and specific objections set forth below, to Appellees' First Set of Interrogatories, Requests for Admissions and Requests for Production of Documents as follows:

**General Objections**

1. Avon Lake objects to the Requests insofar as they seek information that is protected from discovery by the attorney-client privilege, the work product doctrine or any other privileges or immunities protecting confidential information from discovery.
2. Avon Lake objects to the Requests insofar as they set forth pure questions of law that it does not possess the legal expertise to answer. To the extent the Requests seek answers to pure questions of law that have been the subject of consultation between Avon Lake and counsel or of contemplation and/or research by counsel, Avon Lake objects to such Requests on the

Document Request No. 8

Produce all documents used to calculate the figures in column "(2)" of Part I and II of Exhibit G attached to your Notice of Appeal in this case.

Response

See the exhibits attached to Notice of Appeal in Case No. 02-T-1865.

Request for Admission No. 9

Admit that the Budget Commission allocated the 2003 Undivided Local Government Fund and the 2003 Undivided Local Government Revenue Assistance Fund (collectively, the 2003 LGF/RAF) according to an alternative method (the "2003 Alternative Method").

Response

Avon Lake admits that the funds were allocated.

Document Request No. 9

Produce all documents reflecting the method the Budget Commission used to allocate the 2003 LGF/RAF.

Response

See Response to Document Request No. 8.

Request for Admission No. 10

Admit that you received your full share of the 2003 LGF/RAF.

Response

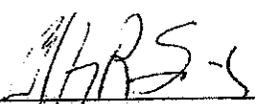
Avon Lake admits that it received its allocation of 2003 LGF/RAF; however, due to the settlement in Case No. 02-T-1865 to which neither Avon Lake or any other Appellant was a party, a portion of the 2003 LGF/RAF funds received were effectively taken back in 2004.

Produce copies of all exhibits you intend to use at the hearing of the above-captioned matter.

Response

Avon Lake has not yet identified the exhibits or demonstrative evidence it expects to introduce into evidence at the hearing in this matter. This response will be seasonably supplemented, pursuant to Rule 26(E) of the Ohio Rules of Civil Procedure, after such exhibits and/or demonstrative evidence have been determined.

As to Objections:

  
\_\_\_\_\_  
Geoffrey R. Smith 0008772  
Law Director  
City of Avon Lake  
150 Avon Belden Rd.  
Avon Lake, Ohio 44012  
(440) 930-4122 (telephone)  
(440) 930-4107 (facsimile)

Attorney for Appellant,  
City of Avon Lake, Ohio

**OHIO BOARD OF TAX APPEALS**

CITY OF ELYRIA, ET AL	)	CASE NO. 2003-T-1533
	)	
Appellants	)	<b>Budget Commission Order</b>
	)	
	)	
vs.	)	
	)	
LORAIN COUNTY BUDGET COMMISSION, ET AL	)	
	)	
Appellees	)	<u><b>APPELLEE, CITY OF AVON</b></u> <u><b>LAKE'S AMENDED ANSWERS</b></u> <u><b>TO DISCOVERY</b></u>
	)	

Now comes the City of Avon Lake by and through legal counsel and submits its amended answer's to various discovery issues as ordered by the Ohio Board of Tax Appeals by order dated June 17, 2005.

**AMENDED INTEROGATORRY ANSWER NO. 3**

The Appellants denied the request for admission number five because the Lorain County Commissioners in passing resolution number 03-657 conditioned it solely upon Lorain's agreement to settle the underlying case. The County Commissioner's original approval was based upon a limit in the number of years that the proposed settlement and alternative would be in place. However, because the City of Lorain did not agree to the limited time frame, the County Commissioners re-voted and approved a method based only on a settlement that was agreeable to the City of Lorain. Therefore, the Commissioners did not approve the alternative method and any

invalid approval of the "2004" Alternative Method.

**AMENDED RESPONSE TO INTERROGATORY NO. 7**

The City of Avon Lake refers to prior Amended Interrogatory Answers relative to the defect existing in the Lorain County Commissioner's approval and the City of Lorain's approval. Further responding, the City of Avon Lake notes that the required local government's approval by September 1, 2003 was not done. Additionally, as indicated in prior responses, a settlement should not be the basis upon which an alternative formula can be based.

**ADMISSION REQUEST NO. 9**

The City of Avon Lake admits that the Lorain County Budget Commission allocated the 2003 undivided local government fund and the 2003 undivided local government assistance fund according to the alternative which they utilized based upon the settlement in Case No. 02-T-1865 to which the City of Avon Lake and Others were not a party. Therefore, the City of Avon Lake admits that said funds were so allocated but denies that said funds were so allocated pursuant to an alternative formula that was valid as it relates to the City of Avon Lake and Others.

**AMENDED RESPONSE TO DOCUMENT REQUEST NO. 9**

Attached hereto, marked as Exhibit "A" are those documents received from the Lorain County Budget Commission in the possession of the City of Avon Lake which the Lorain County Budget Commission used to allocate to 2003 LGF/RAF. The City of Avon Lake reserves the right to supplement this answer if it finds further documents responding to this request.

**AMENDED RESPONSE TO INTERROGATORY NOS. 14**

The City of Avon Lake was required to pay back or in other words take from its share of the 2004 funds the sum of \$21,217.50 from the LGF fund that it had previously received in 2003 and pay that back to the County. While the City of Avon Lake was not required to pay back any of

its 2003 LGF/RAF funds it was additionally required to reduce its allocation of the 2004 LGF/RAF to reflect the settlement of the previous lawsuit and that amount was \$24,492.00 from the LGF and \$3,034.77 from the RAF.

**AMENDED DOCUMENT REQUEST NO. 7**

Attached hereto and included herein as if fully re-written is the amended response to document request No. 7 which evidences two formulas that the City of Avon Lake believes one of which should have been used for 2004 and marked as exhibit ""B". The City of Avon Lake reserves the right to supplement this answer.

**AMENDED DOCUMENT REQUEST NO. 12**

Documents relative to amended document request No. 12 are attached hereto and marked exhibit "A". Further answering the City of Avon Lake believes the formula used in 2003 should have remained intact and that the City of Avon Lake should not have had to repay the \$21,217.50 as discussed in Interrogatory 14. The City of Avon Lake reserves the right to supplement this answer.

Respectfully submitted on behalf of Appellant,  
City of Avon Lake



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GEOFFREY R. SMITH (0008772)  
Director of Law, City of Avon Lake  
150 Avon Belden Road  
Avon Lake, OH 44012-0210  
440-933-2141

*Attorney for Appellant City of Avon Lake*

1                   BEFORE THE BOARD OF TAX APPEALS

2                                 STATE OF OHIO

3                                 - - -

4     City of Elyria, et al.,     )

5                   Appellants,     )

6           vs.                             )     Case No. 2003-T-1533

7     Lorain County Budget     )

8     Commission, et al.,     )

9                   Appellees.     )

10                                 - - -

11                                 Hearing Room E

12                                 State Office Tower

13                                 30 East Broad Street

14                                 24th Floor

15                                 Columbus, Ohio 43215

16                                 Wednesday, January 18, 2006

17                   Met, pursuant to assignment, at

18                   9:02 o'clock a.m.

19     BEFORE:

20                   Steven L. Smiseck, Attorney-Examiner

21                                 - - -

29

1 APPEARANCES:  
2 ON BEHALF OF THE APPELLANTS CITY OF ELYRIA AND  
3 AMHERST TOWNSHIP:  
4 Terry S. Shilling, Esq.  
5 Law Director  
6 City of Elyria  
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1 APPEARANCES (continued):  
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12 COMMISSION:  
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14 Lorain County Prosecuting Attorney  
15 By: Gerald A. Innes, Esq.  
16 Assistant Prosecuting Attorney  
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1 APPEARANCES (continued):  
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3 LORAIN COUNTY BOARD OF COMMISSIONERS:  
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5 John P. Kopf, Esq.  
6 Thompson Hine, LLP  
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15 (614) 220-9440  
16 ---  
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1 begin with the City of Elyria.  
2 MR. SHILLING: Your Honor, my name is  
3 Terry Shilling. I'm the Law Director, City of  
4 Elyria, 131 Court Street, Elyria, Ohio 44035,  
5 (440) 326-1464.  
6 THE EXAMINER: Thank you very much.  
7 And if the other Appellants would please  
8 follow.  
9 MR. ZAGRANS: I'm Eric Zagrans,  
10 representing the City of North Ridgeville, Ohio,  
11 with the law firm Womble, Carlyle, Sandridge &  
12 Rice, 1401 Eye Street, Northwest, Washington, D.C.  
13 20005; telephone number is (202) 857-4516.  
14 THE EXAMINER: Thank you very much.  
15 And next.  
16 MR. SMITH: Geoffrey Smith, Director of  
17 Law for the City of Avon Lake, 150 Avon Beldon,  
18 Avon Lake, Ohio 44012; telephone number  
19 (440) 323-2201.  
20 MR. SHILLING: Your Honor, one -- I am  
21 also involved in representing Amherst Township.  
22 THE EXAMINER: Okay. Thank you very  
23 much, Mr. Shilling.  
24 MR. EKLUND: I am Paul Eklund, and  
25 together with Beverly Adams, we're representing

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1 PROCEEDINGS  
2 ---  
3 Wednesday, January 18, 2006  
4 Morning Session  
5 ---  
6 THE EXAMINER: This is a hearing before  
7 the Board of Tax Appeals relative to an appeal  
8 styled City of Elyria, et al., Appellants, versus  
9 Lorain County Budget Commission, et al.,  
10 Appellees, having been assigned Board of Tax  
11 Appeals Case No. 2003-T-1533.  
12 This hearing is being heard in Hearing  
13 Room E in the offices of the Board of Tax Appeals,  
14 on the 24th Floor of the State Office Tower,  
15 30 East Broad Street, Columbus, Ohio, on  
16 Wednesday, January 18, 2006, at approximately  
17 9:00 o'clock a.m., pursuant to assignment before  
18 Steven L. Smiseck, Attorney-Examiner for the Board  
19 of Tax Appeals.  
20 This appeal is taken from the actions of  
21 the Lorain County Budget Commission relative to  
22 the distribution of a 2004 ULGF and ULRAF.  
23 At this time, I'll ask the Appellants to  
24 please enter their appearances with the attorney's  
25 name, address and telephone number. And we'll

Page 9

1 the Lorain County Metropolitan Park District, with  
2 the law firm of Davis & Young, 1700 Midland  
3 Building, Cleveland, Ohio 44115; telephone number  
4 is (216) 348-1700.  
5 THE EXAMINER: Thank you very much.  
6 Appears to be all. All right. I'll ask  
7 the Appellees to enter their appearances. And  
8 we'll begin with the Budget Commission.  
9 MR. INNES: I'm Gerald Innes, Assistant  
10 Lorain County Prosecutor, 225 Court Street,  
11 Elyria, Ohio 44035; phone number (440) 329-5370.  
12 THE EXAMINER: Thank you.  
13 MR. SUNDERLAND: And on behalf of Lorain  
14 County and the Lorain County Board of  
15 Commissioners, John Sunderland, Thompson, Hine.  
16 With me is John Kopf, my colleague. It's 10 West  
17 Broad Street, Columbus, Ohio 43215; telephone  
18 number is (614) 469-3200.  
19 THE EXAMINER: Okay. Thank you very  
20 much.  
21 Anyone else?  
22 MR. VARANESE: My name is John Varanese.  
23 I'm counsel for the City of Lorain. My address is  
24 85 East Gay Street, Suite 1000, Columbus, Ohio  
25 43215-3118. My phone is (614) 220-9440.

1 with Lorain's appeal, and yet we weren't parties,  
2 we had no representation, we had no authority to  
3 even seek representation. And we put that in our  
4 correspondence to the Commissioners. And  
5 subsequent to that, I had sent a copy to Gerry  
6 Innes.

7 MR. ZAGRANS: Thank you, Mr. Smisek. I  
8 have no more questions at this time.

9 THE EXAMINER: Thank you.  
10 Mr. Smith?

11 MR. SMITH: No.

12 THE EXAMINER: Mr. Shilling?

13 MR. SHILLING: Not at this time.

14 THE EXAMINER: Mr. Eklund?

15 MR. EKLUND: No.

16 THE EXAMINER: Mr. Sunderland?

17 MR. SUNDERLAND: Just very few.

18 ---  
19 CROSS-EXAMINATION

20 BY MR. SUNDERLAND:

21 Q. Mr. Lynch, you said that you had certain  
22 objections to the -- what we've called the 2004  
23 alternative method. And one was that there was no  
24 review date in that 2004 alternative method; is  
25 that correct?

1 isn't that correct?

2 A. That, I wouldn't know.

3 Q. Well, it was the same percentage that had  
4 been used in 2001, wasn't it?

5 A. I'd have to go back and look at that,  
6 John. I'm not sure.

7 Q. Well, do you remember there being any  
8 change in Amherst Township's allocation in the  
9 time that you were a Township Trustee in terms of  
10 percentage?

11 A. That, I can't tell you, because when I  
12 got real involved in looking at this is once there  
13 was an appeal filed, and it was a great learning  
14 experience.

15 Q. Now, in terms of Amherst Township, from  
16 the Revenue Assistance Fund for 2003, the Township  
17 was allocated approximately .506 percent of the  
18 Revenue Assistance Fund, wasn't it?

19 A. If that's what it is, that's what it is.

20 Q. All right.

21 A. It will be close.

22 Q. And, in fact, the township received in  
23 2003 approximately .506 percent of the Revenue  
24 Assistance Fund in Lorain County?

25 A. Yes.

1 A. That's correct.

2 Q. There wasn't any review date in the old  
3 alternative method, either, was there?

4 A. No. But with some built-in --

5 Q. No. The question is: Was there a review  
6 date? And your answer is no.

7 A. No.

8 Q. You also objected to the new alternative  
9 method because there were no factors for change in  
10 it if events on the ground in Lorain County  
11 changed; is that correct?

12 A. Correct.

13 Q. And, yet, there were no fact -- no  
14 factors for change had been employed under the  
15 alternative method for years and years and years,  
16 had they?

17 A. Our understanding is with the original  
18 formula, yes, there were.

19 Q. Yes. But the original formula may have  
20 had factors built into the language of the  
21 formula. But you know from your time as a  
22 township trustee that the allocations made under  
23 the old formula had been a strict percentage, and  
24 that same percentage in 2002 was exactly the same  
25 percentage that had been used in 2000 -- in 1994,

1 Q. And the same thing's true for the Local  
2 Government Fund; it received -- it was allocated  
3 approximately .506 percent and it received  
4 approximately .506 percent of the 2003 Local  
5 Government Fund dollars?

6 A. Weren't the percentages different?

7 Q. Well, there was a slight difference in  
8 the percentage because the Park District received  
9 a few -- received a few thousand dollars from one  
10 of the funds but not from the other, but -- But  
11 that was only a marginal change.

12 And with that except -- exception, it was  
13 still approximately .506 percent?

14 A. What percentage was in the document, I  
15 would believe that's what we received.

16 Q. And both allocated and received?

17 A. Correct.

18 Q. Now, just as a point of clarification, if  
19 the City of Lorain had succeeded in its appeal in  
20 the 2002 case and had this Board of Tax Appeals  
21 declared the old alternative formula invalid, then  
22 for succeeding years, Amherst Township would have  
23 been subjected to a statutory formula allocation,  
24 wouldn't it?

25 MR. SMITH: Objection.

1 affect the City of Avon Lake because we weren't a  
2 party to it.

3 I've never really known a -- a nonparty  
4 to a -- any type of litigation to have to pay for  
5 that settlement. You know, I think the question  
6 is did we actually pay. And I know that that  
7 question's going to come up. But I think we did.

8 And the way I think we did is, in  
9 essence, when you do your tax budgets, which are  
10 due six months prior to, you know, the calendar  
11 year to the county, you have to put in your  
12 estimated revenue source. If your estimated  
13 revenues are going to be reduced the following  
14 year or the subsequent year, you've got to  
15 estimate that and you've got -- you must be made  
16 aware of that.

17 And we were made aware in 2003 that we  
18 were -- you know, when our budget was presented in  
19 July of 2003, we were made aware that our -- our  
20 revenue funds were going to be going down; our  
21 LG- -- or, our Local Government Fund.

22 Q. As a result of your participation in that  
23 \$250,000 carve-back?

24 A. Yes. Our perc- -- Our portion of that  
25 was a little over \$21,000. And our Local

1 other political subdivisions in this settlement  
2 proposal. Would you explain why you think that?

3 A. Well, because there -- the new formula  
4 basically didn't take into consideration any kind  
5 of growth anywhere in the County, you know, for  
6 projecting that. If you look at how the State  
7 distributes the funds, it's -- it's distributed to  
8 the counties based on population, you know. And I  
9 think there's 75 percent of it's based on  
10 population; 25 percent is based on something else.

11 We thought, well, you know, what is  
12 the -- what is the formula that the County is  
13 using to make this distribution? Other than  
14 they're fixing a percentage that was used in prior  
15 years and that was the formula that they were  
16 using.

17 And our concern was our population  
18 continued to grow. Our demands and our needs  
19 continue to grow. The Local Government Fund, you  
20 know, in our experience, has been frozen for the  
21 last two years. So, therefore, those funds aren't  
22 going to grow.

23 And then by reducing it even more, as our  
24 population continues to grow, we're going to be  
25 getting less money, you know, coming back from the

1 Government Funds were going to be reduced by that  
2 much. And our revenues that were coming from the  
3 County with -- we're going to indicate that.

4 Q. So is that 2003 dollars that you cut back  
5 on, or 2004 dollars --

6 A. 2004 --

7 Q. -- that you cut?

8 A. -- dollars.

9 Q. But when did you cut back on it?

10 A. Well, again, we have to present our  
11 revenue budget to the County, I believe it's  
12 July 31st. 2004 revenue budget is due to the  
13 County July 20 -- July 31st, 2003.

14 Q. And that's when you accounted for that  
15 reduction?

16 A. I believe that's when we accounted for  
17 it.

18 Q. You had mentioned --

19 A. Again, we get those numbers from the  
20 County, you know, as far as our projected revenues  
21 for those sources. So, again, you know, it would  
22 have indicated a reduction.

23 Q. Okay. You had indicated that you did not  
24 consider the County to be appropriately  
25 representing your interests and the interests of

1 State. And the County population has -- has  
2 increased over the last several years. And,  
3 again, it doesn't make sense to me to not have  
4 some kind of a formula that takes all of those  
5 factors into -- into account.

6 Q. Were you informed, Mayor Berner, that  
7 this new proposed alternate formula that was then  
8 adopted by the Budget Commission was the result of  
9 the settlement of that litigation?

10 A. That was our understanding; that is  
11 correct.

12 Q. Can you please explain to the Hearing  
13 Officer what you were given to understand  
14 regarding the settlement?

15 A. Well, what we were told, you know, again,  
16 in the scenario -- or, in the synopsis of it is  
17 that our percentage is going to remain the same,  
18 is what it was, except that it's going to be a  
19 percentage of a lower dollar amount because the  
20 higher dollar amount's going to the City of  
21 Lorain. And -- And that's kind of how it worked.

22 And, again, our concern wasn't just with  
23 the settlement, you know, but then you're saying  
24 going forward for all subsequent years, it's going  
25 to be a lower dollar amount also.

1 You know, if you're going to say that's  
2 the way we've always done it, you're assuming,  
3 then, that road mileage never changes, population  
4 never changes, you know, income never changes. So  
5 if you're going to say that's the way you've  
6 always done it, then you're basically saying that  
7 nothing is ever going to change. And we know that  
8 the demographics, the valuation, the road miles,  
9 everything in Lorain County has changed over the  
10 years.

11 BY MR. EKLUND:

12 Q. And real --

13 A. So to say that's the way we've always  
14 done it, just -- it just doesn't make sense.

15 Q. And the relative needs of the various  
16 political subdivisions change also, don't they?

17 A. I would agree.

18 MR. EKLUND: Thank you. No further  
19 questions.

20 THE EXAMINER: Thank you.

21 Mr. Sunderland?

22 MR. SUNDERLAND: Just very briefly.

23 THE EXAMINER: Uh-huh.

24 ---  
25

1 In fact, is it your understanding that  
2 the actual dollars that you received represented  
3 the same percentage of total dollars available in  
4 the county as the percentage you had been  
5 allocated before the number of total dollars was  
6 made clear, wasn't it?

7 A. That we received in 2003?

8 Q. Three.

9 A. Yes, that we received in 2003.

10 MR. SUNDERLAND: No other questions.  
11 Thank you.

12 THE EXAMINER: Mr. Innes?

13 MR. INNES: Just a couple, your Honor.

14 THE EXAMINER: Uh-huh.

15 ---

16 CROSS-EXAMINATION

17 BY MR. INNES:

18 Q. Mayor, you indicated that you went to a  
19 couple of these meetings and --

20 A. One meeting I indicated.

21 Q. And you went to the Commissioners and  
22 voiced your -- your dismay about this formula.

23 Did you ever go to the Budget Commission  
24 and testify in front of the Budget Commission?

25 A. I did not.

1 CROSS-EXAMINATION

2 BY MR. SUNDERLAND:

3 Q. Mayor Berner, in -- for tax year 2003,  
4 Avon Lake was allocated approximately  
5 2.816 percent of the Local Government Fund, wasn't  
6 it, approximately that amount?

7 A. That -- Of the total fund?

8 Q. Of the total fund.

9 A. That sounds correct.

10 Q. And it was --

11 A. Again, it was -- the percentage we got  
12 from the formula was not of the total fund.

13 Q. I understand.

14 A. It's of the balance.

15 Q. But for 2003, Avon Lake received  
16 approximately 2.816 percent of the total funds  
17 that were paid out as well, didn't they?

18 A. I can't confirm that.

19 Q. Do you --

20 A. I would have to look at the numbers to be  
21 reasonably sure.

22 Q. Do you have any reason to believe --

23 A. No, I --

24 Q. -- that you did not receive the same  
25 percentage?

1 Q. Did you ever go to the Budget Commission  
2 and say to the Budget Commission or any  
3 representative of Avon Lake that, "We would rather  
4 go back to the statutory formula than have this  
5 formula approved"?

6 A. I did not.

7 Q. Did you ever go to the Budget Commission  
8 and present evidence to them that this new formula  
9 did not meet your relative needs?

10 A. I did not.

11 MR. INNES: Thank you, Mayor. No further  
12 questions.

13 THE EXAMINER: Thank you.

14 Mr. Varanese?

15 MR. VARANESE: No further questions.

16 THE EXAMINER: Thank you, sir.

17 Any redirect?

18 MR. ZAGRANS: One question, your Honor.

19 THE EXAMINER: Please.

20 ---

21 REDIRECT EXAMINATION

22 BY MR. ZAGRANS:

23 Q. Mayor Berner, when the balance of the  
24 Local Government Fund or the Revenue Assistance  
25 Fund goes down as a result of settling litigation

1 it has impacted adversely the allocations of Local  
2 Government Funding and Revenue Assistance Funding  
3 for these five Appellants who were not  
4 participants. And that's exactly what 5747.55(D)  
5 was meant to prevent.

6 And I want to call to your Honor's  
7 attention your own statement that you wrote in an  
8 order in the Lorain appeal, the 1865 appeal, in an  
9 order entered on May the 9th, 2003 in that appeal.  
10 In other words, about four or five months before  
11 the settlement -- four months before the  
12 settlement in the case took effect.

13 Your Honor said, and I quote, "The  
14 purpose of Revised Code 5747.55(D) is two-fold.  
15 It not only protects a subdivision, the allocation  
16 of which is not challenged, from undergoing the  
17 expense of litigation, but" -- and here's the  
18 point I want to emphasize" -- also ensures that  
19 its share of the Local Government Fund will not be  
20 endangered by such an appeal."

21 And the Appellant parties submit, your  
22 Honor, that whether or not it's a change in the  
23 formula by changing the percentage of the  
24 allocation, or it's a reduction because the  
25 percentage doesn't change but the balance on which

1 the Board to grant relief from the adoption and  
2 the imposition of the new alternative formula,  
3 invalidate the new alternative formula, and revert  
4 the county and all of its subdivisions, including  
5 the five Appellant parties, back to the prior  
6 alternative formula that was in effect.

7 Thank you.

8 THE EXAMINER: Thank you, sir.

9 Do any of the other Appellants wish to  
10 make a closing statement?

11 MR. EKLUND: Just quickly, I'd like to  
12 make --

13 THE EXAMINER: Sure.

14 MR. EKLUND: -- three quick points.

15 THE EXAMINER: Uh-huh.

16 MR. EKLUND: First, as Mr. Zagrans just  
17 pointed out, that in your order dealing with  
18 5747.55(D), you talked about the endangering of a  
19 share. Your Honor, we haven't been endangered,  
20 we've been eliminated, and that's far worse than  
21 just being endangered.

22 Secondly, you've heard nothing here today  
23 except evidence that shows you that the factor and  
24 the criteria being used for the new alternative  
25 formula has nothing to do with reliable or

1 that percentage is calculated is reduced, either  
2 way, your Honor, is endangering a subdivision's  
3 share of the Local Government Fund in a way that  
4 the statute does not permit. That's what you said  
5 in your May 9, 2003 order in the City of Lorain  
6 case; that's exactly the correct understanding of  
7 5747.55(D); and that is what we are asking the  
8 Board to enforce in this case.

9 We feel that it is a violation of Ohio  
10 law to do what the settling parties and the -- the  
11 other participants in that previous litigation  
12 have attempted to impose and cram down on these  
13 nonparticipating entities in that case.

14 We also feel, for reasons that we are  
15 going to specify in the brief and that we didn't  
16 go into in terms of evidence here today, but the  
17 evidence is in the documentary exhibits that --  
18 that are received -- that the new alternative  
19 formula was not, in fact, validly approved by more  
20 than 50 percent of the remaining political  
21 subdivisions besides the City of Lorain and the  
22 County.

23 There also will be an argument that the  
24 County itself did not appropriately adopt it.

25 For all of those reasons, we are asking

1 appropriate factors to determine relative need.  
2 This is a settlement of litigation that had  
3 absolutely no bearing on what the relative  
4 positions and the relative needs of the political  
5 subdivisions might be. That's an abuse of  
6 discretion when the Budget Commission adopts that  
7 kind of formula.

8 The third thing I'd like to point out is  
9 the same as what I brought up in my opening  
10 statement; that is, public policy of Ohio is  
11 embodied in 5747.51, which -- and .62, which  
12 clearly indicates that a park district is entitled  
13 and eligible to participate in these funds. There  
14 is a mandate that the treasurer shall disburse to  
15 those political subdivisions eligible to  
16 participate.

17 The action of the Lorain County Budget  
18 Commission has taken away the ability to  
19 distribute funds by not allocating any portion to  
20 the Park District. That's a violation of public  
21 policy and it's an abuse of discretion. And we'll  
22 follow that up with briefing. Thank you.

23 THE EXAMINER: Thank you, Mr. Eklund.

24 Do any of the Appellees wish to make a  
25 closing statement?

BOARD OF TAX APPEALS  
STATE OF OHIO

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2006 SEP 19 P 3:02

LORAIN COUNTY  
AUDITOR

CITY OF ELYRIA, OHIO  
Thaddeus Pileski, Auditor  
131 Court Street  
Elyria, Ohio 44035

CASE NO.

2006-T-1327

and

CITY OF NORTH RIDGEVILLE, OHIO  
Chris Costin, Auditor  
7307 Avon Belden Road  
North Ridgeville, Ohio 44039

(BUDGET COMM. - LGF/RAF)

and

CITY OF AVON LAKE, OHIO  
Joseph Newlin, Finance Director  
150 Avon Belden Road  
Avon Lake, Ohio 44012

NOTICE OF APPEAL

and

AMHERST TOWNSHIP, OHIO  
John Koval, Clerk  
7530 Oberlin Road  
Elyria, Ohio 44035

Appellants

vs.

LORAIN COUNTY BUDGET  
COMMISSION  
Mark R. Stewart, Member and Secretary  
226 Middle Avenue  
Elyria, Ohio 44035

and

LORAIN COUNTY, OHIO  
Mark R. Stewart, Auditor  
226 Middle Avenue  
Elyria, Ohio 44035

and

BOARD OF COUNTY COMMISSION-  
ERS OF LORAIN COUNTY, OHIO  
226 Middle Avenue  
Elyria, Ohio 44035

and

CITY OF AMHERST  
David C. Kukucka, Auditor  
480 Park Avenue  
Amherst, Ohio 44001

and

CITY OF AVON  
Robert Hamilton, Finance Director  
36080 Chester Road  
Avon, Ohio 44011

and

CITY OF LORAIN  
Ron L. Mantini, Auditor  
200 West Erie Avenue, 6<sup>th</sup> Floor  
Lorain, Ohio 44052-1647

and

CITY OF OBERLIN  
Salvatore Talarico, City Auditor  
69 S. Main Street  
Oberlin, Ohio 44074

and

CITY OF SHEFFIELD LAKE  
Tamara L. Smith, Finance Director  
609 Harris Road  
Sheffield Lake, Ohio 44054

and

CITY OF VERMILION  
Finance Director  
5511 Liberty Avenue  
Vermilion, Ohio 44089

and

GRAFTON VILLAGE  
Linda S. Bales, Clerk-Treasurer  
960 Main Street  
Grafton, Ohio 44044

and

KIPTON VILLAGE  
Albert Buck, Jr., Clerk-Treasurer  
P. O. Box 177  
Kipton, Ohio 44049

and

LAGRANGE VILLAGE  
Rita K. Ruot, Clerk-Treasurer  
P.O. Box 597  
LaGrange, Ohio Ohio 44050

and

ROCHESTER VILLAGE  
Laura A. Brady, Clerk  
52185 Griggs Road  
Wellington, Ohio 44090

and

**SHEFFIELD VILLAGE**

Tim Pelcic, Treasurer  
4340 Colorado Avenue  
Sheffield Lake, Ohio 44054

and

**SOUTH AMHERST VILLAGE**

Janice J. Szmania, Clerk-Treasurer  
103 West Main Street  
South Amherst, Ohio 44001

and

**WELLINGTON VILLAGE**

Karen J. Webb, Clerk-Treasurer  
115 Willard Memorial Square  
Wellington, Ohio 44090

and

**BRIGHTON TOWNSHIP**

Marilyn McClellan, Clerk of Council  
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Wellington, Ohio 44090

and

**BROWNHelm TOWNSHIP**

Marsha Doane Funk, Clerk  
1940 North Ridge Road  
Vermilion, Ohio 44089

and

**CAMDEN TOWNSHIP**

Cheryl Parrish, Clerk of Council  
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Oberlin, Ohio 44074

and

CARLISLE TOWNSHIP  
Barb VanMeter, Clerk  
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LaGrange, Ohio 44050

and

COLUMBIA TOWNSHIP  
Mary Lou Berger, Clerk of Council/Clerk  
25496 Royalton Road, P.O. Box 819  
Columbia Station, Ohio 44028

and

EATON TOWNSHIP  
Linda Spitzer, Clerk of Council/Clerk  
12043 Avon Belden Road  
Grafton, Ohio 44044

and

ELYRIA TOWNSHIP  
Barbara Baker, Clerk of Council/Clerk  
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Elyria, Ohio 44035

and

GRAFTON TOWNSHIP  
Mary Rose Dangelo, Clerk of Council/Clerk  
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and

HENRIETTA TOWNSHIP  
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Oberlin, Ohio 44074

and

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Wellington, Ohio 44090

and

LAGRANGE TOWNSHIP  
Roberta M. Dove Moore, Clerk of Council/Clerk  
P. O. Box 565  
LaGrange, Ohio 44050

and

NEW RUSSIA TOWNSHIP  
Elaine R. King, Clerk of Council/Clerk  
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Oberlin, Ohio 44074

and

PENFIELD TOWNSHIP  
Eleanor Gndt, Clerk of Council/Clerk  
42760 Peck Wadsworth Road  
Wellington, Ohio 44090

and

PITTSFIELD TOWNSHIP  
James R. McConnell, Clerk of Council/Clerk  
17567 Hallauer Road  
Wellington, Ohio 44090

and

ROCHESTER TOWNSHIP  
Laura Brady, Clerk of Council/Clerk  
52185 Griggs Road  
Wellington, Ohio 44090

and

SHEFFIELD TOWNSHIP  
Patricia F. Echko, Clerk of Council/Clerk  
5166 Clinton Avenue  
Lorain, Ohio 44055

and

WELLINGTON TOWNSHIP  
Bernie Nirode, Clerk of Council/Clerk  
44627 State Route 18 E.  
Wellington, Ohio 44090

and

LORAIN COUNTY METROPOLITAN  
PARK DISTRICT  
Denise Gfell, Treasurer  
12882 Diagonal Road  
LaGrange, Ohio 44050

Appellees

1. Appellants, the City of Elyria ("Elyria"), the City of North Ridgeville ("North Ridgeville"), the City of Avon Lake ("Avon Lake") and Amherst Township ("Amherst Twp."), (Collectively Appellants) hereby appeal from the action taken by the Lorain County Budget Commission ("LCBC") on August 14, 2006, allocating the 2007 Undivided Local Government Funds ("LGF") and Undivided Local Government Revenue Assistance Funds ("RAF") unlawfully. This appeal is taken pursuant to ORC Sections 5705.37 and 5747.55.

2. On or after August 21, 2006, Appellants each received notice of the above-referenced action by LCBC, an exact copy of which is attached hereto and made a part hereof as Exhibit "A".

3. The fiscal officer of each Appellant is authorized to file this appeal on behalf of each such Appellant in accordance with the resolutions adopted by the municipal council of Elyria on

September 5, 2006, by the municipal council of North Ridgeville on September 18th, 2006, by the municipal council of Avon Lake on September 11th, 2006, and by the Amherst Twp. Board of Trustees on August 22, 2006, certified copies of which are attached hereto and made a part hereof as Exhibits "B", "C", "D", and "E" respectively.

4. Appellants hereby in the alternative assert that LCBC made the following errors of law in its action taken on August 14, 2006 (See Exhibits A and A-1). *See Springfield City Comm. v. Bethel Twp.*, BTA Case No. 78-F-610 (1982):

(a) LCBC erred by adopting an unlawful alternative method of apportionment of the LGF and RAF which reduces the respective allocable shares of Elyria, North Ridgeville, Avon Lake, and Amherst Twp. of such funds resulting from and implementing a settlement of a tax appeal proceeding before this Board brought by Appellee, the City of Lorain ("Lorain"), Case No. 02-T-1865, in which Elyria, North Ridgeville, Avon Lake and Amherst Twp. were not named parties, in violation of and contra to the provisions of ORC Section 5747.55(D) and Ohio law;

(b) LCBC erred by allocating the 2007 LGF and RAF using an invalid alternative formula that was not timely and lawfully adopted and approved by LCBC and the necessary political subdivisions as required by ORC Sections 5747.53(B) and 5747.63(B).

(c) LCBC erred by allocating the 2007 LGF and RAF using an alternative formula that was not timely and lawfully adopted by the necessary political subdivisions as required by ORC Sections 5747.53 (B) and 5747.63 (B).

(d) LCBC erred by allocating the entire 2007 LGF and RAF pursuant to the implementation of a settlement of a tax appeal proceeding before this Board brought by Appellee, the City of Lorain, (Lorain) in Case No. 02-T-1865 in which Appellants were not named parties in violation of and contra to the provisions of ORC Section 5747.55(D).

(e) LCBC erred by not allocating to the Appellees only the pro rata portion of the 2007 LGF and RAF that was the subject of Case No. 02-T-1865 which erroneously and effectively reduced the 2007 allocation of the LGF and RAF to the Appellants in violation of and contra to the provisions of ORC Section 5747.55(D) and Ohio law.

(f) LCBC erred by not allocating to the Appellants the pro rata (percentage) portion of the 2007 LGF and RAF that was not the subject of Case No. 02-T-1865 which erroneously and effectively reduced the 2007 allocation of the LGF and RAF to the Appellants in violation of and contra to the provisions of ORC Section 5747.55 (D) and Ohio law.

5. Appellants assert that LCBC should have allocated the LGF and RAF for 2007 in accordance with the settlement reached in the tax appeal proceeding in Case No. 02-T-1865 but with no reduction suffered by any Appellant which was not a named party in that tax appeal proceeding. The reductions in the 2007 LGF and RAF necessitated by the increased allocation to Lorain should have been borne entirely by revised allocation to the Appellees in Case No. 02-T-1865 and not by the allocations to Appellants who were not named parties in Case No. 02-T-1865.

6. As a direct and proximate result of one or more of the errors, violations and abuses of discretion set forth above, LCBC has erroneously determined Elyria's, North Ridgeville's, Avon Lake's and Amherst Twp.'s allocations of the 2007 LGF and RAF, and has made unlawful and excessive allocations to Appellees listed in Exhibit "F" attached hereto and made a part hereof. Exhibit "F" sets forth, at Column 1, the amount allocated to each subdivision from the 2007 LGF (Part I) and 2007 RAF (Part II) as erroneously determined by LCBC. Exhibit F sets forth, at Column 2, the amount in dollars which the Appellants claim they should have received from the 2007 LGF and 2007 RAF if LCBC had properly allocated such funds pursuant to law. Exhibit "F" sets forth, at Column 3, the amount in dollars overallocated to Appellees and at Column 4 the amount in dollars underallocated to the Appellants.

7. Appellants assert that when the LCBC allocated the 2007 LGF and RAF by the implementation of the settlement reached in Case No. 02-T-1865, the LCBC should have allocated to the Appellants the percentage of the 2007 LGF and RAF fund that is the same percentage of such funds for 2003, see Exhibit G attached hereto and made a part hereof, that was allocated to the Appellants at the time of the appeal in Case No. 02-T-1865. Further, the LCBC should have only implemented the settlement to that percentage of the 2007 LGF and RAF that is the same percentage of such funds for 2003 that was allocated to the parties in Case No. 02-T-1865 which did not include the Appellants in this case. This allocation is based on the following facts: The 2003 LGF fund was originally Eighteen Million One Hundred Eighty Five Thousand One Hundred Forty Two Dollars (\$18,185,142.00) of which Nine Million Ninety Two Thousand Five Hundred Seventy One Dollars (\$9,092,571.00), fifty percent (50%) was allocated to the County of Lorain and Nine Million Ninety Two Thousand Five Hundred Seventy One

Dollars (\$9,092,571.00), fifty percent (50%) was allocated to all other political subdivisions of Lorain County. The dollar amount and percentage of the Nine Million Ninety Two Thousand Five Hundred Seventy One Dollars (\$9,092,571.00) for each of the appellants are as follows:

Appellant	Dollar Amount	Percentage
Elyria	\$1,925,484.00	21.18
North Ridgeville	622,575.00	6.850
Avon Lake	512,157.00	5.635
Amherst Township	92,041.00	1.015
Totals	\$3,152,256.00	34.68

The 2003 RAF was Two Million Five Hundred Sixty Eight Thousand Two Hundred Thirty One Dollars (\$2,568,231.00) of which One Million Two Hundred Seventy Five Thousand One Hundred Sixteen Dollars (\$1,275,116.00), forty nine and sixty five hundredths percent (49.65%), was allocated to the County of Lorain, Eighteen Thousand Dollars (\$18,000.00), seven hundredths percent (.07%) was allocated to the Lorain County Metropolitan Park District, and One Million Two Hundred Seventy Five Thousand One Hundred Fifteen Dollars (\$1,275,115.00), forty nine and sixty five hundredths percent (49.65%), was allocated to all other political subdivisions of Lorain County. The dollar amount and percentage of the One Million Two Hundred Seventy Five Thousand One Hundred Fifteen Dollars (\$1,275,115.00) for each of the appellants are as follows:

Appellant	Dollar Amount	Percentage
Elyria	\$270,024.00	21.18
North Ridgeville	87,308.00	6.850
Avon Lake	71,823.00	5.635
Amherst Township	12,908.00	1.015
Totals	\$442,063.00	34.68

It is the Appellants' position that these percentages to Appellants of the 2003 LGF and RAF must remain the same for the 2007 LGF and RAF and the Appellants by law must be allocated 34.68% of the 2007 LGF allocated to all political subdivisions other than the County of Lorain and 34.68% of the 2007 RAF allocated to all political subdivisions other than the County of Lorain and Lorain County Metropolitan Park District. By implementing the settlement in Case No. 02-T-1865 and using the "invalid" alternative method from that settlement, the Appellants' allocation for 2007 of the LGF and RAF was effectively reduced as detailed in Exhibit F in violation of and contra to the provisions of ORC Section 5747.55(D) as said Appellants were not parties to Case No. 02-T-1865.

8. Appellants assert that since 1984 (for the LGF) starting for the calendar year 1985 and since 1989 (for the RAF) starting for the calendar year 1990 the LCBC has allocated the LGF and RAF pursuant to an alternative method which alternative method was approved and adopted by the County of Lorain, City of Lorain and a majority of the local subdivisions in Lorain County. Further, said alternative method was approved and adopted in 1998 by the County of Lorain, City of Lorain and a majority of subdivisions in Lorain County, see Exhibit H attached hereto and made a part hereof, and as of this date has not been revised, amended nor repealed and was as of August 14<sup>th</sup>, 2006 still in effect except for the allocation of Five Hundred Thousand Dollars (\$500,000.00) to Human Services which was deleted by agreement of all Lorain County political subdivisions, see Exhibit G attached hereto and made a part hereof. Said alternative method of allocation for the LGF and RAF that should have been used by the LCBC for the 2007 allocation is as detailed and provided in Exhibits G and H. The LCBC abused its discretion and erred in its allocation of the 2007 LGF and RAF by not doing so in accordance with and pursuant to the alternative method as provided in Exhibits G and H, and, as a result, the 2007 allocation of the LGF and RAF to the Appellants was reduced as shown on Exhibit F.

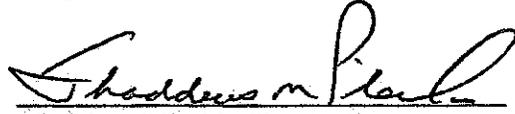
9. Copies of the tax budgets of Elyria, North Ridgeville, Avon Lake and Amherst Township are attached hereto as Exhibits "I", "J", "K", and "L", respectively, and incorporated by reference herein.

WHEREFORE, Appellants, Elyria, North Ridgeville, Avon Lake and Amherst Township, hereby pray that the Board of Tax Appeals:

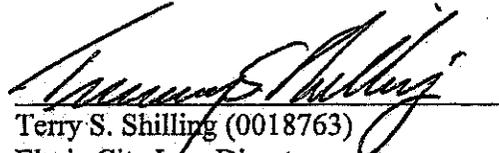
- (a) find that the alternative method of apportionment used by LCBC to allocate the 2007 LGF and RAF is invalid as it specifically relates and is applied to the Appellants;
- (b) allocate the 2007 LGF and RAF among the parties to the appeal in accordance with the alternative method used by the LCBC prior to the settlement of Case No. 02-T-1865, but with any increased allocation to Lorain as the result of such settlement be borne by the Appellees from their allocated shares as provided in Exhibit G and with no reduction suffered by any of the Appellants; and
- (c) reallocate the 2007 LGF and RAF so that the Appellants' percentage of the 2007 LGF and RAF as shown on Exhibit F not be reduced and that said Appellants not be affected or their allocations of the 2007 LGF and RAF not be reduced by implementation of the settlement in Case No. 02-T-1865.
- (d) Find that the alternative method of apportionment used by LCBC prior to the settlement in Case No. 02-T-1865 was properly adopted; and
- (e) Find that the alternative method apportionment used by LCBC to allocate the 2007 LGF and RAF was not properly adopted.
- (f) Find that the alternative method of apportionment as detailed on Exhibits G & H was valid and in effect on August 14<sup>th</sup>, 2006 and was the proper method to be used by the LCBC for the allocation of the 2007 LGF and RAF.
- (g) issue an order for Appellants to recover the costs of these proceedings including

reasonable attorney fees from Appellees, the Lorain County Budget Commission and Lorain County, and to receive such other and further relief as the Board may deem to be just and proper.

Respectfully submitted,



Thaddeus Pileski, City Auditor  
City of Elyria  
131 Court Street  
Elyria, Ohio 44035

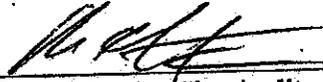


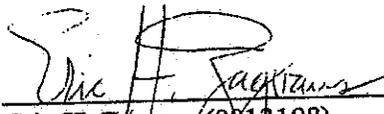
Terry S. Shilling (0018763)  
Elyria City Law Director  
131 Court Street  
Elyria, Ohio 44035  
(440) 326-1464

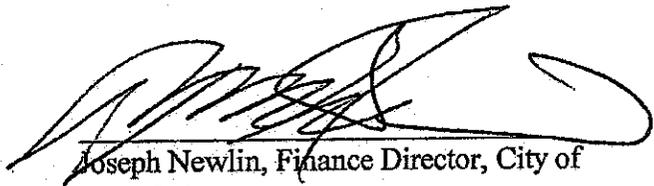
*John Koval*

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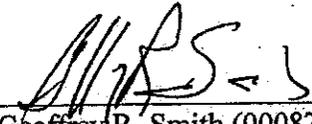
John Koval, Clerk, Amherst Township  
7530 Oberlin Road  
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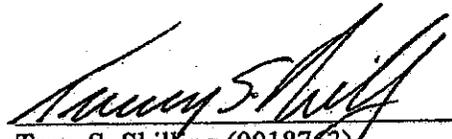
Joseph Newlin, Finance Director, City of  
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Avon Lake, Ohio 44012



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CERTIFICATE OF FILING

The undersigned hereby certifies that a copy of the foregoing Notice of Appeal was filed with the Ohio Board of Tax Appeals by certified mail U.S. mail, return receipt requested, and with the Lorain County Budget Commission by hand delivery this 19th day of September, 2006.

  
Terry S. Shilling (0018763)  
Elyria City Law Director

A:\Notice of Appeal re. BOARD OF TAX APPEALS for 2007.wpd

IN THE SUPREME COURT OF OHIO

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

Appellants, )

v. )

Lorain County Budget Commission, Ohio Tax  
Commissioner Richard A. Levin, Lorain County,  
Lorain County Board of County Commissioners,  
City of Lorain, City of Amherst, City of Avon,  
City of Oberlin, City of Sheffield Lake, City of  
Vermilion, Village of Grafton, Village of Kipton,  
Village of LaGrange, Village of Rochester, Village  
of Sheffield, Village of South Amherst, Village of  
Wellington, Brighton Township, Brownhelm  
Township, Camden Township, Carlisle Township,  
Columbia Township, Eaton Township, Elyria  
Township, Grafton Township, Henrietta Township,  
Huntington Township, LaGrange Township, New  
Russia Township, Penfield Township, Pittsfield  
Township, Rochester Township, Sheffield  
Township, Wellington Township, and Lorain  
County Metropolitan Park District, )

Appellees. )

Case No. 2010-0564

Cross-Appeal From The  
Ohio Board of Tax Appeals

Board of Tax Appeals  
Case Nos. 2003-M-1533,  
2004-M-1166, 2005-M-1301

2010 APR - 8 PM 2:14

FILED/RECEIVED  
BOARD OF TAX APPEALS

NOTICE OF CROSS-APPEAL  
OF APPELLEE AND CROSS-APPELLANT LORAIN COUNTY

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LORAIN COUNTY BOARD OF COUNTY COMMISSIONERS

**FILED**  
APR 08 2010  
CLERK OF COURT  
SUPREME COURT OF OHIO

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NOTICE OF CROSS-APPEAL  
OF APPELLEE AND CROSS-APPELLANT LORAIN COUNTY

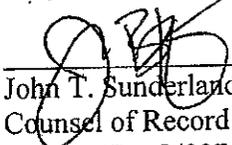
Lorain County hereby gives notice of its cross-appeal as of right, pursuant to R.C. 5717.04 and Supreme Court Rules of Practice 2.1(B) and 2.3(A)(2), from a Decision and Order of the Ohio Board of Tax Appeals ("Board"), entered and journalized in Board Case Nos. 2003-M-1533, 2004-M-1166, and 2005-M-1301 on March 2, 2010. A true copy of the Decision and Order being appealed is attached hereto and incorporated by reference.

Cross-appellant Lorain County complains of the following errors in the Board's Decision and Order:

1. The Board erred in finding that the payment of a portion of the \$250,000 allocated to Lorain County from the 2004 Local Government Fund ("LGF") violated R.C. 5747.55(D) where the Board determined that the alternative method for allocating the LGF in the county was valid, that the alternative method governed the allocation for the LGF years under review, that the \$250,000 payment was a factor in the structure of the alternative method, and where appellants/cross-appellees received the full amounts of their prior year's LGF allocations.

No demand has been filed for the Board to file the certified transcript of the record of the proceedings of the Board and the evidence considered by the Board in making its decision because Appellants have already filed such demand on March 31, 2010.

Respectfully submitted

  
\_\_\_\_\_  
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LORAIN COUNTY BOARD OF COUNTY  
COMMISSIONERS

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing NOTICE OF CROSS-APPEAL OF APPELLEE AND CROSS-APPELLANT LORAIN COUNTY was sent to the following by certified mail, return receipt requested, on April 4, 2010:

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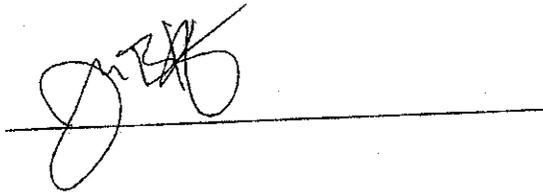
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