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R.C. 5747.55(E)	<i>passim</i>

INTRODUCTION

As set forth in greater detail in Appellants' Merit Brief, the Board of Tax Appeals ("BTA") got it exactly right when it determined that R.C. 5747.55(D) precluded reducing Appellants' LGF allocations for 2003 based on a "new alternative formula" resulting from the settlement of an appeal in which Appellants were not parties:

As these funds were allocated to Lorain County, and [Appellants] identified Lorain County as the over-allocated subdivision, the Ohio Supreme Court's instructions have been met. This board finds that Lorain County was over-allocated by the pro-rata amounts of the \$250,000 settlement only.

City of Elyria v. Lorain Cty. Budget Comm., BTA Nos. 2003-M-1533, 2004-M-1166 and 2005-M-1301 (March 2, 2010), unreported, at 10, Appx. 32.

Nevertheless, the BTA erred in two respects: first, it erroneously failed to apply R.C. 5747.55(D) and (E) to the reductions in Appellants' allocations for the 2004, 2005 and 2006 distribution years that equally resulted from the "new alternative formula," and second, it mistakenly refused to address Appellants' argument that Lorain County's share was over-allocated for the 2006 distribution year for the additional reason that the municipal population of Lorain County had reached 81% or more during the prior year, thus limiting Lorain County's allocation to 30% as required by R.C. 5747.51(H) instead of the 48.302% allocation it actually received for the 2006 distribution year.

Appellants seek redress from this Court for the foregoing two assignments of error, and respectfully submit this Reply Brief in response to the flawed arguments advanced by Appellees, Lorain County and the City of Lorain, in their respect Merit Briefs.

ARGUMENT

APPELLANTS' REPLY BRIEF TO MERIT BRIEF OF APPELLEE, LORAIN COUNTY

Appellants' Proposition of Law No. 1: The provisions of R.C. 5747.55(D) require the Court to reverse the BTA's affirmance of the Budget Commission's reductions in Appellants' allocations of LGF and RAF under the "new alternative formula" for the 2004, 2005 and 2006 distribution years, and to restore such allocations to their prior amounts and percentages, because the "new alternative formula" was mandated by the terms of the settlement resolving the Lorain Appeal to which Appellants were not named as parties.

Appellants' Reply to Lorain County's Propositions of Law No. 1-3:

THE BTA HAS THE STATUTORY AUTHORITY TO GRANT THE RELIEF APPELLANTS REQUEST BECAUSE R.C. 5747.55(D) AND (E) APPLY TO EACH AND EVERY DISTRIBUTION YEAR AFFECTED BY A NEW ALTERNATIVE FORMULA IF, AS IN THIS CASE, SUCH FORMULA WAS ADOPTED TO IMPLEMENT THE RESOLUTION OF AN APPEAL IN WHICH APPELLANTS WERE NOT NAMED AS PARTIES AND THUS DID NOT PARTICIPATE.

Lorain County fundamentally misapprehends R.C. 5747.55(D) and (E) and how those statutory provisions should be applied in this case. Lorain County asks this Court to limit the application of R.C. 5747.55(D) and (E) to one distribution year only, apparently on the theory that the Lorain Appeal involved one distribution year only – the 2003 distribution year. Lorain County also accuses Appellants of asking this Court to invalidate the "new" alternative formula adopted pursuant to the settlement of the Lorain Appeal and equally applicable to the subsequent 2004, 2005 and 2006 distribution years. Neither position is correct.

First, Appellants do *not* advocate the view that a county can never adopt an alternative method if it is in any way related to the appeal of a prior distribution year. Rather, Appellants' position is that a county cannot adopt an alternative method as the result of the resolution or settlement of the appeal of a prior distribution year unless all affected subdivisions were joined as parties in that appeal. Nevertheless, if a new alternative method were adopted to implement the resolution of the appeal of a prior distribution year where certain affected subdivisions were not

joined as parties to the appeal (as in this case), R.C. 5747.55(D) and (E) must be applied to every subsequent distribution year in which the LGF allocations are distributed in accordance with such new alternative method, unless and until a revised or amended alternative method is adopted by all of the affected subdivisions pursuant to R.C. 5747.53(B).

Second, Lorain County is simply wrong to suggest that Appellants seek an order from this Court invalidating the “new alternative method of appointment” that implemented the resolution of the Lorain Appeal. Appellants do not seek such a remedy. Instead, the “new alternative method of appointment” should be amended (rather than stricken) to keep Appellants’ allocations at the same levels as before the Lorain Appeal. The Budget Commission should be ordered to reallocate Appellants’ respective shares for the 2004, 2005 and 2006 distribution years so as to restore their allocations to pre-2003 percentages, along with a commensurate reduction in Lorain County’s allocations for those distribution years.

Appellants’ Reply to Lorain County’s Proposition of Law No. 4:

THE BTA CORRECTLY HELD THAT LORAIN COUNTY WAS OVER-ALLOCATED.

Lorain County’s Proposition No. 4 contends that Appellants may not prevail in this appeal 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.” Appellants submit that Lorain County is wrong on both counts.

First, there has been a determination that the County was over-allocated. The Ohio Board of Tax Appeals expressly held that Lorain County was over-allocated to the extent of Appellants’ share of the \$250,000 reimbursement Lorain County received under the settlement of the Lorain Appeal, which violated the provisions of R.C. 5747.55(D). (*See* BTA Decision and Order entered March 2, 2010, at 9-10; Appx. at 31-32.)

Appellants agree with the BTA's reasoning when it recognized that the 2004 "new" alternative formula included a "carve out" of the fund used to reimburse Lorain County for funds it provided to settle the Lorain Appeal. The BTA correctly stated:

The board finds that the deduction of \$250,000 is based upon a settlement of an appeal in which the appellants were not parties. R.C. 5747.55(D) precludes funds from being removed from taxing subdivisions that were not parties to the appeal. The fact that funds were removed in a later year does not transform the funds into later-year funds. The \$250,000 is traceable to the 2003-allocation appeal. Such a reimbursement is contrary to law.

(*Id.* at 10; Appx. at 32.)

This reasoning should also be applied to the adoption of the 2004 new alternative formula itself. Appellees do not dispute that the adoption of the 2004 new alternative formula was consideration for, and was implemented as the result of, the settlement of the Lorain Appeal. *See City of Lorain v. Lorain County Budget Commission*, BTA Case No. 02-T-1865, Notice of Dismissal (Exhibit 14), Supp. Appx. 230 ("[t]he parties further stipulate that the consideration for the dismissal of this Appeal is the payment by Lorain County, Ohio to the City of Lorain, Ohio in the amount of \$500,000 to be paid prior to September 1, 2003 and ***the adoption by Lorain County, Ohio, the City of Lorain, Ohio and the remaining municipal corporations and townships within Lorain County, Ohio of an alternative formula*** ... for the calendar years 2004 and thereafter") (emphasis added).

Clearly the 2004 new alternative formula was adopted pursuant to the settlement of the Lorain Appeal to which Appellants were not made parties. Therefore, application of the 2004 new alternative formula to Appellants' allocations of LGF/RAF funds violates R.C. 5747.55(D) and (E) and is contrary to law.

Lorain County also mistakenly argues that Appellants have offered no evidence whatsoever on the issue of Lorain County's over-allocation. However, as the evidentiary record

at the January 18, 2006 hearing in BTA Case No. 2003-T-1533 clearly indicates, the BTA limited the presentation of testimony and evidence to six specific issues. (BTA Order of Bifurcation, June 17, 2005, at 4; Supp. Appx. 236.) The only issue addressing Lorain County's over-allocation permitted by the BTA at the hearing involved the allocation of \$250,000 from the 2004 funds to Lorain County.

Appellants presented evidence at the hearing (specifically the testimony and exhibits presented during the examination of Gerald A. Innes, assistant Lorain County prosecutor) that the \$250,000 reimbursement to Lorain County was an integral part of the settlement of the Lorain Appeal, and that the settlement included reducing the 2004 LGF allocations to subdivisions that were not parties to the Lorain Appeal. (See Transcript of January 18, 2006 hearing at 56-78, Supp. Appx. 239-45.)

The January 18, 2006 hearing is the only evidentiary hearing held by the BTA on any of the issues herein. On November 17, 2006, the BTA dismissed Case No. 2003-T-1533 on the grounds that Appellants had not properly invoked the BTA's subject-matter jurisdiction. (BTA Decision and Order, November 17, 2006, at 11; Appx. 124.) On December 1, 2006, the BTA dismissed Case No. 2004-T-1166 and 2005-T-1301 on the same basis. (BTA Decision and Order, Case No. 2004-T-1166, December 1, 2006, at 6, Supp. Appx. 251; BTA Decision and Order, Case No. 2005-T-1301, December 1, 2006, at 6, Supp. Appx. 257.) The BTA did not consider the merits of the cases – consequently, Appellants have not been given the opportunity to present any further evidence regarding the over-allocation to Lorain County.

Finally, Lorain County wrongly argues that Appellants are “playing games” because their 2007 Notice of Appeal names the City of Lorain as over-allocated and the County as properly allocated. In Lorain County's view, “*nothing else changed*” between the 2004-2006 Notices of Appeal on the one hand and the 2007 Notice of Appeal on the other. Lorain County is simply

wrong about that.

For the 2007 allocation year, the Lorain County Budget Commission determined that Lorain County's municipal population surpassed 81%. Thus, under R.C. 5747.51(H) and prior R.C. 5747.53(E), the maximum allocation to Lorain County for that year could be only 30% no matter which formula was used – statutory or alternative. Lorain County was allocated 30% for the 2007 allocation year, which was the proper allocation. It was not over-allocated for 2007, as it was for 2003, 2004, 2005 and 2006, but the City of Lorain was over-allocated for that year. Appellants played no “games” with their argument. Rather, relevant circumstances had materially changed.

Appellants' Proposition of Law No. 2: In accordance with the provisions of R.C. 5747.51(H) and (I) and R.C. 5747.53(E), when the municipal population of Lorain County reached 81% or more of the total population of the county by 2005, the County's share allocation for the 2006 distribution year (BTA No. 2005-M-1301) should have been limited to 30% of the annual LGF/RAF received from the State; thus, Lorain County was overallocated for distribution year 2006 by 18.302% on this basis alone, and the BTA erred in failing to address or hold a hearing on this issue raised by Appellants in BTA No. 2005-M-1301.

The municipal population of Lorain County exceeded 81% of the total county population by 2005, but the BTA did not afford Appellants the opportunity of an evidentiary hearing to demonstrate this fact. Given that the municipal population exceeded 81%, Lorain County's allocation of LGF/RAF for the 2006 distribution year should have been limited to 30% of the total funds received from the State of Ohio, pursuant to R.C. 5747.51(H) and R.C. 5747.53(E), rather than the 48.302% improperly allocated by the Budget Commission. The 18.302% over-allocation should have been reallocated to the other subdivisions of the County, including Appellants, on a *pro rata* basis.

Appellants' Reply to Lorain County' Proposition of Law No. 5:

APPELLANTS DID NOT WAIVE THEIR ENTITLEMENT TO RELIEF IN CASE NO. 2005-T-1301; ON THE CONTRARY, THE BTA NEVER HELD A HEARING OR ALLOWED EVIDENCE TO BE PRESENTED EVEN THOUGH SUBJECT MATTER JURISDICTION BEFORE THE BTA WAS PROPERLY INVOKED.

Appellees' Proposition of Law No. 5 is based on the erroneous premise that "Elyria is not entitled to any relief on the 2006 population issue" – for that reason, they argue, "Elyria waived the claim because it never pursued it in the BTA." (Lorain County's Merit Brief at 18.)

The Appellee's premise is incorrect because:

1. Appellants' argument on appeal – that the 2006 LGF allocation for Lorain County should be reduced to 30% under R.C. 5747.51(H) and R.C. 5747.53(E) because the municipal population of the County had surpassed 81% – was asserted only in BTA Case No. 2005-T-1301 (the appeal concerning the Budget Commission's 2006 distribution year allocation). (See Notice of Appeal, BTA No. 2005-M-1301, at 12, ¶ 8, Appx. 104.)

2. The BTA restricted the January 18, 2006 hearing before it to BTA Case No. 2003-T-1533 (involving the 2004 LGF and RAF allocation) only. (See BTA Notice of Hearing dated 11/16/2005, Supp. Appx. 258.)

3. The BTA limited the issues it would consider at the January 18, 2006 hearing to the six items listed in its Order of Bifurcation entered on June 17, 2005. (See BTA Order of Bifurcation in Case No. 2003-T-1533 at 4, Supp. Appx. 236.) Neither the issue of Lorain County's municipal population for the 2006 allocation year nor anything else to do with BTA Case No. 2005-T-1301 was included in the BTA's bifurcation order.

4. The BTA dismissed Case No. 2005-T-1301 on the basis that Appellants "have not properly invoked the subject-matter jurisdiction of the board" without affording Appellants a hearing or any opportunity to present any evidence regarding Lorain County's municipal

population claim. (See BTA Decision and Order in Case No. 2005-T-1301, entered Dec. 1, 2006 at 6; Supp. Appx. 257.)

5. Appellants' Notice of Appeal in BTA Case No. 2005-T-1301 (Exhibit I, Part 1 (LGF) and Part II (RAF)) clearly states that Lorain County was over-allocated for 2006 and explains why it was over-allocated for 2006 pursuant to R.C. 5747.51(H) and R.C. 5747.53(E).

6. The only subdivision that could have been over-allocated under R.C. 5747.51(H) and R.C. 5747.53(E) is Lorain County. For the 2006 allocation year, the maximum percentage that could be allocated to Lorain County was 30% no matter which formula is used – statutory or alternative. Anything over 30% is an over-allocation as detailed in Exhibit I, Parts I and II of Appellants' Notice of Appeal in BTA Case No. 2005-T-1301. (See Notice of Appeal, BTA No. 2005-T-1301, at 12, ¶ 8; Appx. 104.)

In short, Appellants never had a hearing before the BTA on their claim that Lorain County's municipal population had surpassed 81% for the 2006 allocation year, never had the opportunity to present any evidence on this contention before the BTA, thus never waived this contention, and therefore are entitled to the relief they requested.

Appellants' Reply to Lorain County's Proposition of Law No. 1 as Cross-Appellant:

IN A LOCAL GOVERNMENT FUND APPEAL, THE BTA HAS CONTINUING AUTHORITY UNDER R.C. 5747.55(D) AND (E), AND UNDER R.C. 5705.37, TO MODIFY AND MITIGATE CHANGES TO THE LGF AMOUNTS ALLOCATED TO SUBDIVISIONS WHO ARE NOT PARTIES TO A BTA APPEAL.

The fallacy of Lorain County's Proposition of Law No. 1 is its contention that the relief required by R.C. 5745.55(D) and (E) is properly limited to one year. On the contrary, the basic protections of R.C. 5747.55(D) and (E) ensure that a non-party's allocation cannot be changed as the result or outcome of any BTA appeal, irrespective of whether such an appeal affected only

one allocation year or multiple allocation years.

In *South Russell v. Geauga Cty. Budget Comm.* (1984), 12 Ohio St.3d 126, the second issue was “whether the Board of Tax Appeals had the authority to require a County Budget Commission to certify a voted tax levy where the period for such tax levy has expired.” In other words, the issue involved whether the Board of Tax Appeals had the authority to modify a decision of a County Budget Commission which would extend beyond the year for which the particular appeal was filed. The Supreme Court held “we answer [this issue] in the affirmative based upon this Court’s holding in *State ex rel. Geauga County Budget Comm. v. Court* (1982), 1 Ohio St.3d 110.” *Id.* at 133.

The *South Russell* decision is distinguishable from this case because the Village of South Russell filed an appeal for only one year rather than for each year the Geauga County Budget Commission had acted improperly. Under those circumstances, this Court held the Village was only entitled to relief for the one year for which they had filed an appeal and for no other years. In this case, by stark contrast, Appellants have filed separate appeals for each year the Budget Commission used the “new” alternative formula implemented as a result of the settlement of the Lorain Appeal to allocate LGF to Appellants, starting with the 2004 allocation year and continuing each and every year through the 2011 allocation year (thus far), inclusive.

Therefore, the BTA has the continuing authority under R.C. 5747.55(D) and (E) and R.C. 5705.37 to modify changes to the LGF allocation of subdivisions who are not parties to an appeal. In this case, that should include inter alia the 2004, 2005 and 2006 allocation years, because the BTA Notice of Dismissal of the prior Lorain Appeal expressly states that “the parties further stipulate that the consideration for the dismissal of this appeal is ... the adoption ... of an alternative formula for the allocation of ... funds ... *for the calendar years 2004 and thereafter*” (emphasis supplied), and where Appellants (who were non-participants in the Lorain Appeal)

have filed Notices of Appeal *for the calendar years 2004 and thereafter*.

APPELLANTS' REPLY BRIEF TO MERIT BRIEF OF APPELLEE, CITY OF LORAIN

THE PROVISIONS OF R.C. 5747.55(D) AND R.C. 5747.55(E) ARE APPLICABLE TO ALTERNATIVE FORMULA ALLOCATIONS UNDER R.C. 5747.53.

The City of Lorain advances the new and limited argument that R.C. 5747.55(D) has no applicability to the Budget Commission's exercise of discretion in allocating LGF funds pursuant to an alternate formula under R.C. 5747.53. This statement is incorrect. In *Elyria v. Lorain Cty. Budget Comm.* 117 Ohio St.3d 403, 2008-Ohio-940 (syllabus no. 1), this Court held that "R.C. 5747.55 applies to an appeal taken from budget commission orders that allocate funds based on an alternative method of apportionment." (Appx. 35.) Thus, R.C. 5747.55(D) and (E) do have application to these appeals of the Budget Commission's exercise of discretion involving an alternative formula under R.C. 5747.53.

This Court has made it clear that "[n]o change may be made in any amount allocated to participating subdivisions that are not appellees before the BTA." *City of Canton v. Stark Cty. Budget Comm.* (1988), 40 Ohio St.3d 243, 249. Yet this is exactly what happened in this case – Appellants were not parties to the Lorain Appeal, but their allocations of LGF for all of the years under appeal in this case were substantially reduced as the result of the Lorain Appeal.

The City of Lorain is correct that "Appellants [are] displeased with the result of the 2004 Alternative Formula" but not for the reasons the City ascribes. The 2004 Alternative Formula was the product and result of the settlement of the Lorain Appeal. It created substantial reductions in the LGF allocations to Appellants who were not parties to the Lorain Appeal for the calendar years 2004 and thereafter. Appellants are certainly "displeased" with the violation of R.C. 5747.55(D) and (E) that resulted in such substantial reductions based on the resolution of an

appeal to which they were not made parties.

CONCLUSION

Accordingly, for the foregoing reasons and the reasons more fully set forth in the Merit Brief of Appellants, the BTA's Decision and Order entered on March 2, 2010 correctly held that the "new" alternative formula, adopted pursuant to the terms of the settlement of the Lorain Appeal that violates R.C. 5747.55(D) because Appellants were not named as parties in that appeal, could not be imposed on Appellants for the 2003 distribution year, but erroneously concluded that it could thereafter be imposed on Appellants for the 2004, 2005 and 2006 distribution years. The Court should reverse the BTA's determination regarding the 2004, 2005 and 2006 distribution years, and should order the Budget Commission to reallocate Appellants' respective shares of the LGF and RAF distributions for the 2004, 2005 and 2006 distribution years in accordance with the provisions of R.C. 5747.55(D), R.C. 5747.55(E), R.C. 5747.51(H), R.C. 5747.51(I) and R.C. 5747.53(E).

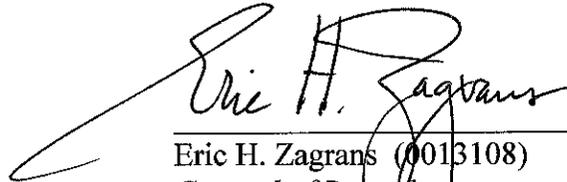
Dated: September 15, 2010

Respectfully submitted,



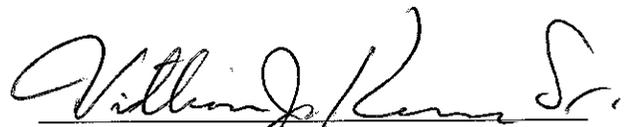
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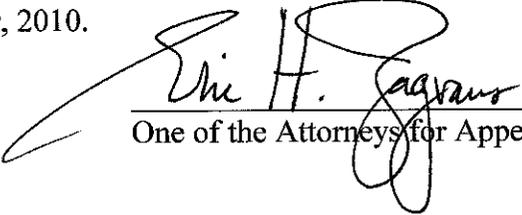


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief of Appellants City of Elyria, Ohio, City of North Ridgeville, Ohio, City of Avon Lake, Ohio, and Amherst Township, Ohio, together with their Supplemental Appendix, were served by electronic mail upon Lawrence D. Pratt, Assistant Attorney General, Tax Section, OFFICE OF THE ATTORNEY GENERAL OF OHIO, State Office Tower, 30 East Broad Street, 16th Floor, Columbus, Ohio 43215-3428, lawrence.pratt@ohioattorneygeneral.gov, counsel for Appellees, Richard A. Levin, Tax Commissioner of Ohio, *et al.*; John T. Sunderland and John B. Kopf, THOMPSON HINE LLP, 41 South High Street, Suite 1700, Columbus, Ohio 43215, john.sunderland@thompsonhine.com and john.kopf@thompsonhine.com, counsel for Appellees, Lorain County and Lorain County Commissioners; Gerald A. Innes, Assistant Prosecuting Attorney for Lorain County, OFFICE OF THE LORAIN COUNTY PROSECUTOR, Lorain County Courthouse, Elyria, Ohio 44035, jerry.innes@lcprosecutor.org, counsel for Appellee, Lorain County Budget Commission; and John R. Varanese, 85 East Gay Street, Suite 1000, Columbus, Ohio 43215-3118, jrvlawof@sbcglobal.net, counsel for Appellee, City of Lorain, Ohio, and all other Appellees herein, this 15 day of September, 2010.



One of the Attorneys for Appellants



BOARD OF TAX APPEALS
STATE OF OHIO

City of Lorain,

Case No. 02-T-1865

Appellant,

Steven L. Smiseck
Attorney-Examiner

vs.

Lorain County
Budget Commission, et al.,

Appellees.

NOTICE OF DISMISSAL

We, the undersigned attorneys for the respective parties, do hereby stipulate, pursuant to Ohio Administrative Code §5717-1-17 that this Appeal be and hereby is dismissed with prejudice with each party to bear its costs and attorney's fees. The parties further stipulate that the consideration for the dismissal of this Appeal is the payment by Lorain County, Ohio to the City of Lorain, Ohio in the amount of \$500,000.00 to be paid prior to September 1, 2003 and the adoption by Lorain County, Ohio, the City of Lorain, Ohio, and the remaining municipal corporations and townships within Lorain County, Ohio of an alternative formula for the allocation of Local Government Funds and Revenue Assistance Funds by the Lorain County

Budget Commission to Lorain County, Ohio, the City of Lorain, Ohio, and the remaining municipal corporations and townships within Lorain County, Ohio for calendar years 2004 and thereafter.

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CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Dismissal was served, via U.S. Mail, postage prepaid, upon the following, this _____ day of August, 2003:

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OHIO BOARD OF TAX APPEALS

City of Elyria, et al.,)
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 Appellants)
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 vs.)
)
 Lorain County Budget Commission, et al.,)
)
 Appellees.)

CASE NO. 2003-T-1533
(BUDGET COMMISSION)

ORDER
(Bifurcating Proceedings)

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Entered **JUN 17 2005**

The Board of Tax Appeals considers this matter following issuance of an order requiring the parties to show cause as to why the proceedings in this matter

should not be bifurcated. Several of the parties hereto have filed memoranda in support of bifurcation.

At issue in this appeal is the applicability of an alternate formula purportedly adopted and applied by the budget commission to the 2004 allocations of the Undivided Local Government Fund and Undivided Local Government Revenue Assistance Fund. Also at issue are the actual allocations received by the appellants under the purported formula. In the event that the formula purportedly adopted for 2004 is found to be invalid, an issue arises as to whether the method employed to allocate the funds in 2003 and years prior is both valid and applicable to 2004. In the event it is not, this board must consider whether the statutory methods of apportionment should have been applied and make an allocation pursuant to statute.

The board finds that if either of the alternative methods of allocation is determined to be legally applicable, the time and effort necessary for making the extensive factual determinations and mathematical calculations required for the application of the statutory formulas would be supererogatory. If, however, the alternative formulas are determined to be inapplicable, only then will it become necessary to present evidence and make the calculations required for apportionment using the statutory formulas. At such time, further action may be scheduled for that purpose.

Thus, upon review, the Board of Tax Appeals orders that the hearing of issues be bifurcated.

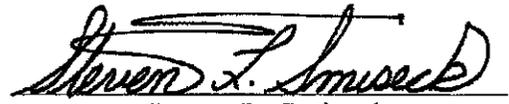
The board orders that these proceedings first be limited to the consideration of the following issues:

1. Whether the 2004 alternative method used by the commission was properly adopted pursuant to statute;
2. Whether allocating the Lorain County Metropolitan Park District, a statutorily eligible subdivision, a "zero" amount of the funds renders the 2004 alternative method invalid;
3. Whether the method implemented as part of a settlement of a 2003 tax year ULGF and ULGRAFF appeal before this board constitutes an impermissible change in the amount allocated to participating subdivisions that were not appellees to that appeal in violation of R.C. 5747.55(D), where the settlement resulted in a change for 2004 in the amounts allocated to those subdivisions that were not appellees in the 2003 appeal;
4. Whether the allocation from the 2004 funds of \$250,000 to Lorain County, in addition to its 48.302 percentage, resulted in a reduction in the amounts allocated to the appellants in this matter for the 2003 fund year so as to constitute an impermissible change in the amount allocated to participating subdivisions that were not appellees in violation of R.C. 5747.55(D);
5. Whether the alternative method used by the budget commission in tax year 2003 and years prior was factually and legally valid and applicable pursuant to statute;
6. Whether this board has the authority to allocate the 2004 ULGF and ULGRAFF pursuant to any method other than the statutory formulas set forth in R.C. 5747.51 and 5747.62 or alternative formulas adopted pursuant to R.C. 5747.53 and 5747.63.

In the event this board determines that the alternate formulas in issue for 2004 and 2003 and years prior are legally inapplicable or improperly applied, further evidentiary proceedings may be ordered to give the parties an opportunity to present additional evidence with respect to the remaining legal and factual issues presented by the appeal.

The parties are advised that, in the event this board determines that the alternates are inapplicable, any further proceedings relative to the apportionment of the local government funds under the statutory methods shall be scheduled on an expedited basis.

On Behalf of the Board of Tax
Appeals, Pursuant to Ohio Adm.
Code 5717-1-10,

A handwritten signature in black ink, reading "Steven L. Smiseck". The signature is written in a cursive style with a horizontal line above the name.

Steven L. Smiseck
Attorney Examiner

[1] approved the 2004 alternative method because the
[2] documents they submitted did not contain original
[3] signatures. Pittsfield Township was not counted
[4] in determining whether a majority of subdivisions
[5] had approved the 2004 alternative method because
[6] the document it submitted did not include an
[7] attached formula.

[8] And those are the stipulations.
[9] THE EXAMINER: Thank you very much.

[10]
[11] Thereupon, Appellants' Exhibit Nos. 1
[12] through 5, 7 through 108, 111 through
[13] 118, and Appellee's Exhibits A through N
[14] were received into evidence.

[15]
[16] MR. SUNDERLAND: And in light of those
[17] stipulations, I think that the — particularly
[18] given the hour, I think the Appellants wanted to
[19] caucus and determine what remaining live testimony
[20] they needed.

[21] THE EXAMINER: Okay.
[22] MR. ZAGRANS: That is correct, your
[23] Honor.

[24] And just one clarifying supplement to
[25] what Mr. Sunderland —

[1] (Luncheon recess taken.)

[3] PROCEEDINGS

[5] Wednesday, January 18, 2006
[6] Afternoon Session

[7]
[8] THE EXAMINER: We'll resume. I believe
[9] we left off at the point of turning things over to
[10] the Appellants for them to present their case, and
[11] I will do so now.

[12] MR. ZAGRANS: Thank you very much, your
[13] Honor.

[14] The first witness that we will have is
[15] Mr. Gerry Innes, a member of the Lorain County
[16] Budget Commission.

[17] THE EXAMINER: Very good. Mr. Innes.
[18] (Witness placed under oath.)

[19] THE EXAMINER: Mr. Zagrans, at your
[20] leisure.

[21] MR. ZAGRANS: Thank you.

[1] THE EXAMINER: Please, Mr. Zagrans.
[2] MR. ZAGRANS: — read to you as one of
[3] the stipulations. He referred to the master
[4] agreement, the new alternative formula, by
[5] reference to the Appellees' exhibit. It may also
[6] be referred to from time to time as Appellants'
[7] Exhibit 47. It's the same document.

[8] THE EXAMINER: Okay. Very good. I will
[9] make a note of that. Thank you.

[10] MR. ZAGRANS: Thank you.

[11] THE EXAMINER: Thank you very much,
[12] gentlemen. Sounds like you guys did a lot of hard
[13] work and it's appreciated.

[14] We will go ahead and take a break now to
[15] give you folks a chance to grab some lunch and
[16] talk over how we wish to proceed.

[17] If we reconvene at 1:00 o'clock, will
[18] that give you enough time?

[19] MR. EKLUND: Yes.

[20] MR. SHILLING: That give you enough time
[21] to —

[22] THE EXAMINER: Is that enough time?

[23] MR. SUNDERLAND: Yes.

[24] THE EXAMINER: Okay. Very good. We'll
[25] reconvene at 1:00.

[1] GERALD A. INNES

[2] of lawful age, being first duly placed under oath,
[3] as prescribed by law, was examined and testified
[4] as follows:

[5] DIRECT EXAMINATION
[6] BY MR. ZAGRANS:

[7] Q: Good afternoon, Mr. Innes. For the
[8] record, would you please state your full name and
[9] your current title?

[10] A: Gerald A. Innes. I'm Assistant
[11] Prosecutor for the Lorain County Prosecutor.

[12] Q: And, Mr. Innes, we have known each other
[13] for very many years, have we not?

[14] A: We have.

[15] Q: So will you please forgive me if I
[16] occasionally forget and call you "Gerry" —

[17] A: That's —

[18] Q: — rather than "Mr. Innes"?

[19] A: That's fine.

[20] Q: Thank you very much.

[21] Would you please tell the Hearing Officer
[22] whether you are currently a member of the Lorain
[23] County Budget Commission, by — by designation
[24] from the County Prosecutor?

[25] A: The Lorain County Prosecutor is, and I

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[1] attend the meetings.
[2] Q: At his designation?
[3] A: Yes.
[4] Q: And how long have you been doing that?
[5] A: Fourteen years.
[6] Q: So, therefore, in 2003, during the Budget
[7] Commission meetings and consideration of the
[8] matters that came before them in that year, you
[9] were serving as one of the three members of the
[10] Commission at that time, correct?
[11] A: That's correct.
[12] Q: And because you were a member of the
[13] Budget Commission, you were aware of the appeal
[14] that the City of Lorain had commenced in late 2002
[15] in a proceeding known as 2002-T-1865 against the
[16] Budget Commission and others, correct?
[17] A: Yes.
[18] Q: And would you please describe what your
[19] involvement in that proceeding was?
[20] A: When it was filed, I was advised by both
[21] the Budget Commission and the County Commissioners
[22] that that had been filed. The initial thing was
[23] to coordinate getting a transcript sent down to
[24] the Board of Tax Appeals; arranging to get
[25] counsel, at that time Mr. Sunderland, for the

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[1] Budget Commission; trying to gather together the
[2] documents for the transcript; and advising the
[3] Budget Commission.
[4] Q: And, Mr. Innes, you are aware from your
[5] involvement in that proceeding, are you not, that
[6] the City of Lorain's appeal only concerned the
[7] allocation of the 2003 LGF and RAF, true?
[8] A: Yes.
[9] Q: And the only relief that was sought by
[10] the City of Lorain in its appeal was a
[11] reallocation of the 2003 LGF and RAF, correct?
[12] A: That's my recollection.
[13] MR. ZAGRANS: May I approach, your Honor?
[14] THE EXAMINER: You may.
[15] BY MR. ZAGRANS:
[16] Q: Handing you what's been marked for
[17] identification purposes as Appellants' Exhibit 57,
[18] that is a copy of the Notice of Appeal filed by
[19] the City of Lorain, is it not?
[20] A: Yes.
[21] MR. ZAGRANS: 57, your Honor.
[22] THE EXAMINER: Okay.
[23] BY MR. ZAGRANS:
[24] Q: And, indeed, Paragraph No. 1 confirms
[25] what you just testified to, that the City was

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[1] appealing from the allocation of the 2003 LGF and
[2] RAF pursuant to what they considered to be an
[3] unlawful alternate formula, true?
[4] A: That is correct.
[5] Q: And the relief that's sought on the very
[6] last page of the notice of appeal part, which is
[7] the fifth page of the exhibit, was that the Board
[8] allocate the 2003 LGF and RAF among the parties to
[9] the appeal pursuant to the statutory method,
[10] correct?
[11] A: That's correct.
[12] Q: Now, there came a point in time in which
[13] the 1865 appeal, by that number, was settled among
[14] the parties; correct?
[15] A: Yes.
[16] Q: And was that settlement proposal that was
[17] ultimately accepted initiated by the County?
[18] A: No. The final settlement, no.
[19] Q: The original discussions that led to the
[20] final settlement was what I was asking you, Gerry.
[21] A: There — There were some proposals
[22] originally put forth by the county.
[23] Q: And am I correct that those proposals,
[24] before it got to the point of being the final
[25] settlement, were discussions that Mr. James Cordes

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[1] participated in on behalf of the County?
[2] A: Yes.
[3] Q: And Mayor Fulton participated in those
[4] discussions with Mr. Cordes on behalf of the City
[5] of Lorain?
[6] A: That's my understanding, although I
[7] wasn't present during any of those meetings.
[8] Q: And the essence of the proposal that was
[9] accepted between the City of Lorain and Lorain
[10] County was that the City of Lorain would receive a
[11] 2003 allocation in the form of a lump-sum \$500,000
[12] payment; is that correct, in part?
[13] A: That's correct.
[14] Q: All right. And the remaining part of the
[15] settlement was that the 2004 allocation and each
[16] year thereafter would be based on a new calculated
[17] formula so as to provide an additional \$640,000 a
[18] year to the City of Lorain over and above that
[19] which it had previously been allocated, correct?
[20] A: I don't recall if the six-forty was the
[21] exact number, but it was around thereabouts.
[22] MR. ZAGRANS: May I approach, please,
[23] your Honor?
[24] THE EXAMINER: You may.
[25] BY MR. ZAGRANS:

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[1] Q: Gerry, handing you what's been marked for
[2] purposes of this hearing as Appellants'
[3] Exhibit 48. That is a copy of a letter from you
[4] to Mayor Fulton dated July 17, 2003; is that
[5] correct?

[6] A: That's correct.

[7] MR. SUNDERLAND: Your Honor, if I could
[8] just interject in a moment —

[9] THE EXAMINER: Thanks.

[10] MR. SUNDERLAND: — for a moment.

[11] I don't want to be formalistic about
[12] this, but this has been a cross-examination with
[13] leading questions from every single question
[14] that's been asked. And I would object to
[15] Mr. Zagrans testifying. And I would request that
[16] until there is some determination that there is a
[17] hostile witness or something of that sort, that he
[18] do a direct examination and not a
[19] cross-examination.

[20] MR. ZAGRANS: If I may be heard about
[21] that, your Honor.

[22] THE EXAMINER: You may.

[23] MR. ZAGRANS: I don't believe that
[24] Mr. Innes needs to be characterized by you as a
[25] hostile witness in order to entitle me to use

[1] Fulton, you were trying to summarize the materials
[2] and conditions of the settlement as you understood
[3] it between the County and the City of Lorain,
[4] correct?

[5] A: That's correct.

[6] Q: Okay. And that does confirm that the
[7] allocation, as you just said, for 2004 and
[8] thereafter was to be recalculated based on giving
[9] Lorain an additional \$640,000 a year, correct?

[10] A: That is correct.

[11] Q: And that's over and above the 500,000
[12] that they were to be allocated to — for 2003,
[13] correct?

[14] A: Right.

[15] Q: And with regard to that 2003 additional
[16] allocation of \$500,000, isn't it true that the
[17] County would be responsible ultimately for paying
[18] half of that \$500,000?

[19] A: That's correct.

[20] Q: And that the other half of the \$500,000
[21] was to be repaid or reimbursed or refunded by the
[22] remaining political subdivisions in the County?

[23] MR. SUNDERLAND: Objection.

[24] Could you clarify as to time frame?

[25] THE EXAMINER: Sustained.

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[1] leading questions. I believe Mr. Innes is a
[2] member of an opposing party in these proceedings.
[3] They are adverse to my clients and to the other
[4] Appellants. And it's the nature of the adversity
[5] of the parties and Mr. Innes' membership and
[6] identification with one of those parties that
[7] entitles me to cross-examine him and use leading
[8] questions, not because he is hostile. Indeed, I
[9] don't think anyone can properly characterize
[10] Mr. Innes as a hostile witness.

[11] THE EXAMINER: The objection will be
[12] overruled.

[13] You may proceed, Mr. Zagrans.

[14] MR. ZAGRANS: Thank you very much.

[15] BY MR. ZAGRANS:

[16] Q: I'm sorry, Gerry, I didn't hear your
[17] answer to my question. Is that, in fact, what
[18] this document is?

[19] A: The document does indicate a total of
[20] 640,000.

[21] Q: No, I'm sorry. Just as a foundational
[22] matter, this is a letter from you to Mayor Fulton
[23] dated July 17, 2003; is it not?

[24] A: That's correct.

[25] Q: Okay. And in your letter to Mayor

[1] BY MR. ZAGRANS:

[2] Q: That the —

[3] MR. ZAGRANS: I'll rephrase, your Honor.

[4] BY MR. ZAGRANS:

[5] Q: Isn't it correct, Mr. Innes, that the
[6] remaining \$250,000 was supposed to be the
[7] responsibility of being paid by the remaining
[8] political subdivisions in the County? And I'll
[9] ask a second question as to the timing of that.

[10] A: That's correct.

[11] Q: Okay. And wasn't it your understanding
[12] that the remaining 250,000 that related to the
[13] 2003 al — additional allocation given the City
[14] that was to be repaid by the remaining
[15] subdivisions in the County, was to be repaid in
[16] 2004?

[17] A: I would say that that was something we
[18] assumed was going to happen.

[19] Q: Okay. And turning to the very last
[20] sentence in Appellants' Exhibit 48, you informed
[21] Mr. Fulton what you understood to be an essential
[22] component of this settlement, was that the
[23] proposed agreement would expire if it was not
[24] accepted by September 1, 2003, correct?

[25] A: That's what it reads, yes.

[1] Q: All right. And did you get a copy of the
[2] letter that went from Mayor Fulton to the members
[3] of Lorain City Council announcing the settlement?

[4] A: I'm going to guess I probably have seen
[5] it at one time or another, but I don't
[6] specifically recall.

[7] MR. ZAGRANS: May I approach?

[8] THE EXAMINER: You may.

[9] BY MR. ZAGRANS:

[10] Q: Handing you what's been marked as
[11] Appellants' Exhibit 54. That is, in fact, a copy
[12] of the letter from Mayor Fulton to the Lorain City
[13] Council.

[14] You have seen that before, now that you
[15] view the document; is that true?

[16] A: I believe I have.

[17] Q: Okay. And again, Mayor Fulton writes
[18] consistently with what your understanding of the
[19] settlement to be was, that the agreement is a
[20] lump-sum payment of 500,000 for 2003, and a
[21] percentage increase equal to 640,000 for 2004 and
[22] every year thereafter, true?

[23] A: Yes.

[24] Q: All right. Now, as a member of the
[25] Budget Commission and as a Prosecutor for Lorain

[1] County who is interested in making sure that the
[2] settlement that was being proposed was properly
[3] carried out and papered, you monitored the
[4] compliance with the — by the City of Lorain with
[5] the settlement and how they were going about
[6] approving the settlement, true?

[7] MR. SUNDERLAND: Could you read that
[8] question back for me, please?

[9] MR. ZAGRANS: It's a very long question,
[10] and I think I can do better, your Honor, if I can
[11] try over.

[12] THE EXAMINER: Why don't you go ahead,
[13] then.

[14] MR. ZAGRANS: Thanks very much.

[15] BY MR. ZAGRANS:

[16] Q: You were monitoring how the City of
[17] Lorain complied with the settlement and — and
[18] processed the settlement, did you not?

[19] A: You mean prior to it being approved or —

[20] Q: Prior to the Budget Commission final
[21] approval in late September of 2003.

[22] A: No, I would not say I monitored what — I
[23] mean, I waited to see how they responded as to
[24] the —

[25] Q: And they responded by adopting a couple

[1] of ordinances, didn't they?

[2] A: Yes. Yes.

[3] Q: And you received copies of those
[4] ordinances following their adoption by Lorain City
[5] Council, correct?

[6] A: The Budget Commission received those.

[7] Q: Okay.

[8] MR. ZAGRANS: May I approach, please?

[9] THE EXAMINER: You may.

[10] MR. ZAGRANS: Thank you.

[11] BY MR. ZAGRANS:

[12] Q: Handing you Appellants' Exhibits 45 and
[13] 46, Mr. Innes.

[14] Exhibit 45 is the ordinance by the City
[15] of Lorain approving the settlement agreement and
[16] authorizing the settlement agreement to be entered
[17] into, correct?

[18] A: Yes.

[19] Q: And it specifies both in the title of
[20] Ordinance No. 133-03 and in the "whereas" —
[21] various "whereas" clauses, and in Section 1 and
[22] Section 2, that this is, indeed, a settlement
[23] agreement of the pending tax litigation, correct?

[24] A: Yes, the word "settlement" does appear in
[25] those clauses.

[1] Q: And Section 5 specifies that this
[2] approval of entering into the settlement agreement
[3] of the pending tax litigation would expire and
[4] become null and void on September 1, 2003 if it —
[5] it had not been accepted by the required number of
[6] political subdivisions in the County before that
[7] time, correct?

[8] A: It just says it shall expire.

[9] Q: If not accepted by the required number of
[10] local governments by that time, correct?

[11] A: That's correct.

[12] Q: And then Exhibit 46 is the subsequent
[13] ordinance adopted by the City of Lorain the
[14] following month, approving the new alternate
[15] formula that was one component of the settlement
[16] agreement of the tax litigation, correct?

[17] A: Yes.

[18] Q: Sir?

[19] A: Yes.

[20] Q: Now, Gerry, we have — we have referred
[21] to a master agreement or a revised alternate
[22] formula. And I just want to bring Exhibit 47 —

[23] MR. ZAGRANS: If I may approach, please,
[24] your Honor.

[25] THE EXAMINER: You may.

BY MR. ZAGRANS:

[1] Q: I'd like to bring Exhibit 47 to your
[2] attention, please, and ask you to look at that, if
[3] you would; and confirm whether or not Appellants'
[4] Exhibit 47 is, in fact, a copy of the master
[5] agreement and alternative method that was one of
[6] the components of the settlement agreement of the
[7] tax litigation.

[8] A: It is.
[9] Q: And it's a seven-page document. And I
[10] only want to call to your attention one paragraph
[11] on one page. It's the bottom of Page 2 of
[12] Appellants' Exhibit 47, Paragraph 1.A regarding
[13] allocation. Do you see where I'm referring to,
[14] Mr. Innes?

[15] A: Yes.
[16] Q: It indicates in Paragraph 1.A.i that the
[17] Budget Commission is to allocate to the County a
[18] particular percentage of the funds — it's
[19] 48.302 percent — plus \$250,000 for the 2004
[20] calendar year allocation, does it not?

[21] A: Yes.
[22] Q: And then it's the same percentage without
[23] the additional 250,000 for each additional year
[24] thereafter, correct?

[1] correct?
[2] A: That would have been my understanding.
[3] Q: And if we turn the page, we see that
[4] among the political subdivisions in the County
[5] whose allocations will be so reduced, are Amherst
[6] Township, correct?

[7] A: Yes, sir.
[8] Q: The City of Avon Lake, correct?

[9] A: Yes.
[10] Q: The City of Elyria, correct?

[11] A: Yes.
[12] Q: The City of North Ridgeville, correct?

[13] A: Yes.
[14] Q: And the Lorain County Metropolitan Park
[15] District, correct?

[16] A: Yes.
[17] Q: Now, notice of this intended revised
[18] alternate formula was given to all of the local
[19] governmental entities and political subdivisions
[20] in the county, was it not?

[21] A: I believe it was attempted to get — be
[22] given to everyone, and I believe it was.

[23] Q: And there were a series of meetings set
[24] up with a variety of the local governments.
[25] There was a meeting, I believe, that was

[1] A: That's correct.
[2] Q: And then in iii under that, there's no
[3] specified amount of funds that we're talking
[4] about. It says a percentage of the remaining
[5] funds to each of the remaining political
[6] subdivisions, right?
[7] A: That's correct.
[8] Q: And it was your understanding that the
[9] use of the words "remaining funds" meant that
[10] since there's going to be 250,000 less for the
[11] remaining political subdivisions in 2004, the
[12] percentages that are therefore — thereafter set
[13] forth would be based on that reduced number; and
[14] for each year after 2004, the percentage would be
[15] on a higher number because the 250,000 wouldn't be
[16] deducted, correct?

[17] A: That's correct.
[18] Q: So it's clear, is it not, and it was
[19] clearly your understanding, that the amount that
[20] would be allocated to the remaining political
[21] subdivisions in Lorain County as a result of the
[22] settlement of the tax litigation over the 2003 LGF
[23] and RAF allocations was going to be reduced to
[24] those remaining political subdivisions by the
[25] amount of 2000 — \$250,000 in that first year,

[1] involving only the townships that you attended; is
[2] that true?

[3] A: There were a series of meetings —
[4] Q: Let's put it this way: You attended
[5] pretty much all of those meetings, right?

[6] A: I believe I did.
[7] Q: There was a meeting at — There were a
[8] couple meetings at the Russia Township Town
[9] Hall — I attended one of those — with the cities
[10] and villages in attendance, right?

[11] A: I recall two at New Russia and one in
[12] Sheffield.

[13] Q: Okay. And the political subdivisions
[14] were given the same set of materials at each of
[15] those meetings? I mean, there was no — there
[16] wasn't anything that was give to one that wasn't
[17] given to another, correct?

[18] A: I believe that's correct.

[19] Q: All right. And they were —
[20] A: To the best of my knowledge.

[21] Q: And they were given a copy of the master
[22] agreement, correct?

[23] A: To the best of my knowledge, yes.

[24] Q: Okay. Then if you would, please —

[25] MR. ZAGRANS: I need next, please, 118.

[1] BY MR. ZAGRANS:
[2] Q: 118 and 113.
[3] Next in time, Mr. Innes, you were aware
[4] that the Commissioners — the County Commissioners
[5] for Lorain County considered the question of
[6] whether or not to approve the alternate formula
[7] that was a component of the settlement of the
[8] parties in the tax litigation, correct?
[9] A: That occurred around late August —
[10] Q: Right.
[11] A: — of 2003.
[12] Q: Around late August?
[13] A: Yes.
[14] MR. ZAGRANS: Your Honor, I'm informed
[15] that you have the only copy —
[16] THE EXAMINER: Oh, okay.
[17] MR. ZAGRANS: — that we have of 118 and
[18] 113.
[19] THE EXAMINER: Okay.
[20] MR. ZAGRANS: So I'm wondering if I can
[21] borrow them briefly and then I'll return them to
[22] you.
[23] THE EXAMINER: You certainly may.
[24] MR. ZAGRANS: Thank you. Thanks very
[25] much.

[1] allocation, correct?
[2] A: I meant that the County was paying
[3] 250,000.
[4] Q: And that's because the political
[5] subdivisions were paying the other 250,000
[6] comprising the \$500,000 settlement for the 2003
[7] allocations, correct?
[8] A: Well, I'm not — I'm not certain that I
[9] can answer that right now. I can only speak to
[10] what I spoke to about at that time. I can't deny
[11] that or affirm what I was thinking at that time.
[12] Q: Well, okay. I didn't mean to confuse you
[13] by my question. Let's go back and — and maybe
[14] take it step by step. Maybe I just went and got
[15] to a — sort of a summary too fast here.
[16] You understood that there was a \$500,000
[17] total settlement for that part of the settlement
[18] that dealt with the 2003 allocations, correct?
[19] A: Yes.
[20] MR. SUNDERLAND: Objection.
[21] MR. ZAGRANS: Okay.
[22] MR. SUNDERLAND: You've called that a
[23] total settlement and a part of a settlement in the
[24] same question.
[25] THE EXAMINER: Sustained.

[1] BY MR. ZAGRANS:
[2] Q: Handing you, Mr. Innes, what's been
[3] marked for identification purposes as Appellants'
[4] Exhibit 118. That's a copy of the minutes of —
[5] it's called a Journal Entry, but it's essentially
[6] the minutes of the meeting of the County
[7] Commissioners on August 28, 2003, correct?
[8] A: That is correct.
[9] Q: And you attended and spoke at that
[10] meeting, correct?
[11] A: Yes.
[12] Q: And one of the things that you talked
[13] about to the County Commissioners was the
[14] settlement agreement that had been agreed upon,
[15] true?
[16] A: I'm sure I did.
[17] Q: And if you notice, you talk in the third
[18] line of those minutes about the County paying
[19] \$250,000 for the 2003 allocation. Do you see
[20] that?
[21] A: Yes.
[22] Q: And, of course, what you meant by that
[23] was that the County was paying a net 250,000
[24] because the other remaining political subdivisions
[25] would be paying the other 250,000 for the 2003

[1] BY MR. ZAGRANS:
[2] Q: Okay. Mr. Innes, let me try it again.
[3] You understand that the settlement of the
[4] 2003 allocations was part of the overall
[5] settlement, right?
[6] A: Yes.
[7] Q: And the settlement of the 2003
[8] allocations was \$500,000 in total, correct?
[9] A: Yes.
[10] Q: And you understood that the County was to
[11] pay half of that \$500,000 piece for the 2003
[12] allocations, correct?
[13] A: Yes.
[14] Q: And the remaining political subdivisions
[15] in Lorain County were to pay the other half of
[16] that piece for the 2003 allocations, correct?
[17] A: Yes.
[18] Q: That's all I was trying to get at.
[19] And then you go on to say in sort of the
[20] middle of that first paragraph, where it says, "He
[21] said", it's referring still to you, is it not?
[22] You see where I am, Gerry?
[23] A: Uh-huh.
[24] Q: The reference to, "He said this
[25] repayment" —

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[1] A: Yes, I see it.
[2] Q: — is a reference to what you said at the
[3] meeting, is it not?
[4] A: Yes.
[5] Q: Okay. It indicates that you said, "This
[6] repayment should be divided between the litigants
[7] to the lawsuit, but the proposal divides it up
[8] between all if they were in the lawsuit or not."
[9] Isn't that what you told the Commissioners?
[10] A: Yes. I — I am explaining what the
[11] proposal from Attorney Goddard is.
[12] Q: Right. And you didn't think it was right
[13] or proper that it be divided up among political
[14] subdivisions, whether they were litigants in the
[15] lawsuit or not; and that's part of what you were
[16] explaining to the Commissioners, wasn't it?
[17] A: I had some concerns as to what the result
[18] of that would be.
[19] Q: And you were plainly telling them that
[20] despite your concerns, what they were being asked
[21] to approve and to vote on was dividing up the
[22] settlement allocations among all of the political
[23] subdivisions, including those who were not part of
[24] the tax litigation, correct?
[25] A: My concern was that exactly might happen

[1] A: That's my best recollection.
[2] Q: Now, you had indicated, if you look on
[3] the first part of Exhibit 113 that — that deals
[4] with the local government allocation formula, you
[5] had indicated at the end of that first paragraph
[6] that the County was being asked to reconsider the
[7] time limit on the approval of the alternative
[8] method, correct?
[9] A: I'm sorry, where are you referring?
[10] MR. ZAGRANS: May I approach?
[11] THE EXAMINER: You may.
[12] THE WITNESS: Oh, I see it; end of the
[13] first paragraph.
[14] BY MR. ZAGRANS:
[15] Q: End of the first paragraph.
[16] You indicated to the Commissioners that
[17] they are being asked to reconsider the time
[18] limits, correct?
[19] A: That's correct.
[20] Q: But then if you turn to the Resolution
[21] portion of the exhibit where you see what the
[22] County actually did in adopting the resolution, it
[23] does not indicate that the Commissioners
[24] reconsidered the prior resolution, does it? In
[25] fact, it indicates, instead, they rescinded the

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[1] did happen, that this would foster future
[2] litigation.
[3] Q: But you were clearly telling the
[4] Commissioners that what they would be voting on
[5] was a resolution that would divide the allocations
[6] among all political subdivisions, whether they
[7] were part of the tax litigation or not, correct?
[8] You were warning them of that?
[9] A: I think that's accurate.
[10] MR. ZAGRANS: And then, if I may —
[11] THE EXAMINER: Uh-huh.
[12] MR. ZAGRANS: — approach.
[13] BY MR. ZAGRANS:
[14] Q: Handing you Appellants' Exhibit 113,
[15] Mr. Innes. That was a subsequent resolution
[16] adopted by the County Commissioners about a week
[17] later, after Exhibit 118's resolution, correct?
[18] A: That's correct.
[19] Q: And the only difference between the two
[20] resolutions, both of them purporting to adopt and
[21] approve alternate — the alternative method, is
[22] that the first-in-time resolution had it for the
[23] years 2004 through 2010, so it was limited in
[24] time; and the second resolution was unlimited in
[25] time; is that correct?

[1] prior resolution; is that true?
[2] A: That is correct.
[3] Q: And in the same document, the same
[4] resolution, they both purport to rescind the prior
[5] resolution and adopt and approve the alternative
[6] formula that's attached as an exhibit, true?
[7] A: That's correct.
[8] MR. ZAGRANS: Just one moment, please,
[9] your Honor.
[10] THE EXAMINER: Uh-huh.
[11] MR. ZAGRANS: May I approach, please?
[12] THE EXAMINER: You may.
[13] MR. ZAGRANS: Thank you.
[14] I'll return these two exhibits to you.
[15] Thank you.
[16] BY MR. ZAGRANS:
[17] Q: Mr. Innes, handing you what's been marked
[18] as Appellants' Exhibit 60. That is a copy of the
[19] meeting minutes and attached exhibits for the
[20] special meeting of the Budget Commission of Lorain
[21] County on September 24, 2003; is that correct?
[22] A: Yes, sir.
[23] Q: And you attended that meeting of the
[24] Budget Commission as one of the members of that
[25] Commission?

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[1] A: Yes, I did.

[2] Q: And you will see that at the bottom of
[3] the first page under "Journal Entries" is a motion
[4] to distribute to the County \$250,000 in \$50,000
[5] monthly installments; do you see that?

[6] A: Yes, I do.

[7] Q: That is the portion of the 2003
[8] reallocation settlement that was to come from
[9] monies that would otherwise have been
[10] distributable to the political subdivisions of the
[11] County, correct?

[12] A: Yes.

[13] Q: And if we turn to the second page, the
[14] third paragraph, we see that the County Budget
[15] Commission indicated that it had acceptances of
[16] the alternate formula from Lorain County, from the
[17] City of Lorain, and from 19 other political
[18] subdivisions of the County, correct?

[19] A: That's correct.

[20] Q: And then in the last paragraph on Page 2
[21] before Mr. Talerek called the question, you
[22] entered into a discussion of some of the
[23] provisions of the formula that you would have
[24] preferred not be drafted into it; is that true?

[25] A: That's true.

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[1] Q: But you told them that time was of the
[2] essence and that essentially there wasn't a lot of
[3] time to make a lot of changes and modifications at
[4] that late date?

[5] A: That's true.

[6] Q: What were some of the provisions to the
[7] alternative formula that you would have preferred
[8] not to have been drafted into it?

[9] A: There were some sections regarding some
[10] procedural things that they wanted the Budget
[11] Commission to agree to. I was concerned about the
[12] zero allocation to the Park Board, and I was
[13] concerned about the non-Appellants' reductions.

[14] Q: And you were also concerned about having
[15] the non-Appellants in the 1865 tax litigation
[16] being responsible for paying half of the \$500,000
[17] carve-back, weren't you?

[18] A: That's what I meant about the — the
[19] reduction.

[20] Q: Okay. Well, you were also concerned
[21] about the going-forward reduction for the
[22] non-Appellants, too, weren't you — were you not?

[23] A: I'm sure I was concerned about anything
[24] that would cause somebody to appeal the case.

[25] Q: Okay. Turning to the very last page, the

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[1] final exhibit that was attached to those meeting
[2] minutes in Appellants' Exhibit 60, that is the
[3] total proposed redistribution, is it not, based on
[4] the alternative — the new alternative formula?

[5] A: Which page are you referring to?

[6] Q: The very — You can take it from the very
[7] last page or you can take it from the
[8] third-to-the-last page, either way, of Appellants'
[9] Exhibit 60.

[10] A: Okay.

[11] Q: Okay? That's the — The last page is the
[12] total redistribution based on the new alternative
[13] formula. The third-to-the-last page is just the
[14] Local Government Fund portion of it.

[15] A: Okay.

[16] Q: Right?

[17] A: Yes.

[18] Q: All right. And you see there that when
[19] it talks about the new proposed percentages at the
[20] upper, left-hand corner, it says, "...plus
[21] \$250,000 county agreement to be paid back to
[22] general fund in year 2004," right?

[23] A: I see that.

[24] Q: That's the part coming from the remaining
[25] political subdivisions, including the five

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[1] Appellants in this case, correct?

[2] A: That's correct.

[3] Q: And similarly, to the right-hand side,
[4] there's a box that says, "Budget Commission is
[5] approving the \$250,000 to be paid back to county
[6] general fund," right?

[7] A: Correct.

[8] Q: That's the same thing, the payback by the
[9] remaining political subdivisions for the County's
[10] 2003 payment of \$500,000 to the City of Lorain,
[11] right?

[12] A: That is right.

[13] Q: And then the last question I have for
[14] you, Mr. Innes, is: Three lines down — or, four
[15] lines down, excuse me, in the listing, it says,
[16] "balance remaining for other subdivisions," and it
[17] gives a number; and then under it, it takes — it
[18] subtracts 250,000. And the item reads "Reducing
[19] 250,000 from subdivisions to be repaid to the
[20] general fund." Do you see that, sir?

[21] A: Yes.

[22] Q: And then after subtracting the 250,000,
[23] the remaining line item reads, "Balance remaining
[24] for other subdivisions after reduction of
[25] 250,000", correct?

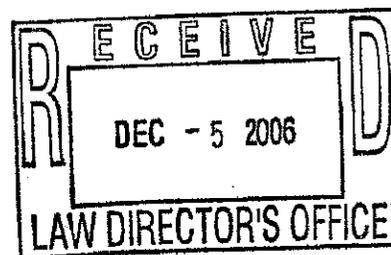
OHIO BOARD OF TAX APPEALS

City of Elyria, City of Avon Lake,)
City of North Ridgeville, Amherst)
Township, and Lorain County)
Metropolitan Park District,)
Appellants)
vs.)
Lorain County Budget Commission, et al.,)
Appellees.)

CASE NO. 2004-T-1166

(BUDGET COMMISSION:
ULGF and ULGRAF)

DECISION AND ORDER



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Entered DEC 1 2006

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

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

As a consequence of *Elyria*, supra, the Board of Tax Appeals now considers this matter. The appeal concerns the Lorain County Budget Commission's apportionment and distribution of the 2005 Undivided Local Government Fund ("ULGF") and the 2005 Undivided Local Government Revenue Assistance Fund ("ULGRAF"). The appellants argue that the alternative formulas used by the commission to allocate the funds were not legally applicable.

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

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

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

Evidently as a consequence of the settlement, a revised alternate formula ("new formula") was proposed for consideration. In September 2003, the budget commission adopted the new formula, which was first used for the 2004 allocations. The distribution year now before us, 2005, was also allocated according to the new formula. The instant appeal was filed by the appellants, each of which received less under the new formula than they did with the old formula. In their notice of appeal, appellants claim that the new alternate formula had not been properly adopted and assert that allocation should be made according to the old formula.

The notice of appeal establishes that the appellants claim the 2005 allocations should be made according to the old formula. Exhibit G of the notice of appeal sets forth the names of the appellee subdivisions and the amounts of claimed overallocation. Column No. 1 of Exhibit G sets forth the 2005 allocations made by the budget commission. In column No. 2 of the exhibit, the appellants list the share of the funds "that should have been allocated under the alternative method used prior to settlement in Case No. 02-T-1865." A review of the exhibit, however, discloses that the appellants do not, in fact, claim that all allocations should be reverted to the prior formula. For example, for both the ULGF and the ULGRAF, the appellants claim that the city of Lorain should maintain the allocation it received under the new formula. A

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

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

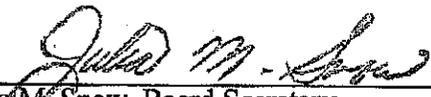
"[A]llocate the 2005 LGF and 2005 RAF among the parties to the appeal in accordance with the alternative method used by the LCBC prior to the settlement of Case No. 02-T-1865, but with any increased allocation to Lorain [city] as the result of such settlement borne only by the Appellees from their allocated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

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

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

In accordance with *City of Elyria v. Lorain Cty. Budget Comm.* (Nov. 17, 2006), BTA No. 2003-T-1533, unreported, we conclude that the appellants have not properly invoked the subject-matter jurisdiction of this board. The Board of Tax Appeals therefore dismisses BTA No. 2004-T-1166.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.

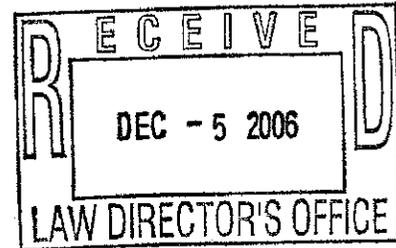


Julia M. Snow, Board Secretary

OHIO BOARD OF TAX APPEALS

City of Elyria, City of Avon Lake,)
 City of North Ridgeville, Amherst)
 Township, and Lorain County)
 Metropolitan Park District,)
)
 Appellants)
)
 vs.)
)
 Lorain County Budget Commission, et al.,)
)
 Appellees.)

CASE NO. 2005-T-1301
 (BUDGET COMMISSION:
 ULGF and ULGRAF)
 DECISION AND ORDER



APPEARANCES:

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

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

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

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

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

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

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

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

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

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

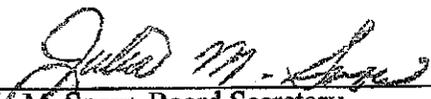
"[A]llocate the 2006 LGF and 2006 RAF among the parties to the appeal in accordance with the alternative method used by the LCBC prior to the settlement of Case No. 02-T-1865, but with any increased allocation to Lorain [city] as the result of such settlement borne only by the Appellees from their allocated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

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

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

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

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



Julia M. Snow, Board Secretary

STATE OF OHIO



11/16/2005

TERRY S. SHILLING
LAW DIRECTOR CITY OF ELYRIA
328 BROAD ST.
ELYRIA, OH 44035

BOB TAFT
GOVERNOR

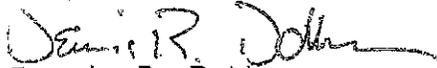
In Re: CITY OF ELYRIA, OHIO, CITY OF NORTH
RIDGEVILLE, OHIO, CITY OF AVON LAKE,
OHIO, AMHERST TOWNSHIP, OHIO & LORAIN COU
Case No. 2003-T-1533

Dear TERRY S. SHILLING:

The above matter has been scheduled for hearing before STEVEN L. SMISECK, Hearing Examiner at the offices of the Board of Tax Appeals, 24th Floor, State Office Tower, 30 E. Broad Street, Columbus, Ohio, on 01/18/2006, at 9:00 AM.

Please provide duplicate copies to the Board of any exhibits which you plan to offer into evidence at the hearing.

Very truly yours,


Dennis R. Dotter
Assignment Commissioner

DRD/SUPTDAP
cc: Court Reporter
PROSECUTING ATTORNEY
AUDITOR
TREASURER
CHRIS S. COSTIN, CITY AUDITOR
ERIC H. ZAGRANS
JOSEPH NEWLIN
GEOFFREY R. SMITH
JOHN KOVEL, CLERK
PAUL D. EKLUND