

ORIGINAL

IN THE SUPREME COURT OF OHIO

CITY OF ELYRIA, OHIO,	)	CASE NO. 10-0564
CITY OF NORTH RIDGEVILLE, OHIO,)	
CITY OF AVON LAKE, OHIO, and)	
AMHERST TOWNSHIP, OHIO,)	
)	
)	
Appellants,	)	On Appeal from the Ohio Board of
	)	Tax Appeals
vs.)	
)	
RICHARD A. LEVIN, Tax Commissioner)	Case Nos. 2003-M-1533
of Ohio, <i>et al.</i> ,)	2004-M-1166
)	2005-M-1301
)	
Appellees.)	

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INTRODUCTION

On remand following this Court's decision in *Elyria v. Lorain Cty. Budget Comm.*, 117 Ohio St.3d 403, 2008-Ohio-940 (Appx. 34), the Board of Tax Appeals ("BTA") correctly determined that R.C. 5747.55(D) precluded any reduction in Appellants' Local Government Fund ("LGF") and Revenue Assistance Fund ("RAF") allocations for 2003 based on a "new alternative formula" that had been adopted pursuant to the terms of the settlement of an earlier 2002 tax appeal to which Appellants had not been named as parties. As the BTA found:

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. ...

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.

However, notwithstanding its correct application of the provisions of R.C. 5747.55(D) to *part* of the "new alternative formula" that had been adopted consequent to the settlement of the earlier tax appeal to which Appellants were not named as parties, the BTA went on to hold that the remaining provisions of the "new alternative formula" applicable to the 2004, 2005 and 2006 distribution years were lawful and would not be amended to remove the pro-rata reductions of Appellants' allocations for those years. This distinction is illogical and erroneous. The entire "new alternative formula" was adopted to enact the terms of the settlement of the 2002 tax appeal. As the BTA found, although a county, the most populous city in that county, and a majority of the remaining taxing subdivisions have the power to revise and adopt alternative

formulas in reliance on any lawful factor they consider appropriate and reliable, in this case “one factor taken into consideration [in adopting the ‘new alternative formula’] was the settlement of litigation.” *Id.* at 9, Appx. 31. Moreover, once the “new alternative formula” was approved, the BTA concluded that “it remains in force for ensuing years until it is revised, amended or repealed pursuant to statute.” *Id.*, citing *Reynoldsburg v. Licking Cty. Budget Comm.*, 104 Ohio St.3d 453, 2004-Ohio-6773; *Lancaster v. Fairfield Cty. Budget Comm.* (1999), 86 Ohio St.3d 137.

Therefore, the entire “new alternative formula” that was adopted pursuant to the terms of the settlement of a tax appeal to which Appellants were not parties, and that was nevertheless applied to reduce Appellants’ allocations in each subsequent distribution year, violates the provisions of R.C. 5747.55(D) and is unlawful. The illegal reductions in Appellants’ allocations should be restored from the allocation to Lorain County, the only over-allocated subdivision, for the 2004, 2005 and 2006 distribution years.

The BTA’s erroneous holding appears to be based on its incorrect belief that Appellants had withdrawn their claim as to the manner in which the alternative formula for distribution-year 2004 (and subsequent distribution-years) was approved:

While the appellants originally challenged the manner in which the 2004 alternative formula (sometimes referred to as the “new alternative formula” to distinguish it from the alternative formula that had previously been in place and had been challenged by the city of Lorain [in its 2002 tax appeal]), they have withdrawn that claim. (Appellants’ brief regarding Ohio Supreme Court instructions to the board on remand, at 6.) Therefore, in accordance with the court’s instructions to this board, the only issue for our consideration is whether the appellants are entitled to additional funds from Lorain County, the entity identified through the notice of appeal as the “overallocated” subdivision.

* * *

In the present matter, the appellants have withdrawn their claim as to the manner in which the alternative formula for distribution-year 2004 was approved. Therefore, the board finds the alternative

formula for the 2004-distribution year to be valid.

Id. at 6-8, Appx. 28-30. The BTA also found the allocations for the 2005 and 2006 distribution years to be lawful on the same basis. *Id.* at 10, Appx. 32.

In reality, however, all Appellants had withdrawn was their subordinate argument that the “new” alternative method of apportionment had not been timely and properly adopted under the timetable and procedures prescribed by R.C. 5747.53 and 5747.63. Appellants never abandoned, and continue to press, their claim that the manner of approval of the “new alternative formula” for the 2004 distribution-year (and each subsequent distribution-year) was completely unlawful because it was the product of the settlement of the earlier appeal in which Appellants were not named as parties in violation of R.C. 5747.55(D).

Finally, the BTA erred in the appeal of the 2006 distribution-year allocation (BTA No. 2005-M-1301) by failing to address or hold a hearing on the issue Appellants had raised that, since the percentage of the municipal population within Lorain County had reached 81% or more, Lorain County’s share allocation for the 2006 distribution-year was limited to 30% of annual LGF/RAF in accordance with R.C. 5747.51(H). The BTA further erred by failing to reallocate each Appellant’s share of the LGF/RAF amounts for the 2006 distribution-year, based upon Lorain County’s 18.302% over-allocation for that year, as required by R.C. 5747.51(H) and (I) and 5747.53(E).

This Court should redress these errors by reversing the determination of the BTA in these respects and ordering Appellants’ under-allocations of LGF/RAF for the 2004, 2005 and 2006 distribution years to be restored from the allocations made to Lorain County, the only over-allocated subdivision, for those years. In addition, in light of the municipal population of Lorain County growing to exceed the statutory threshold of 81% by 2005, the Court should order the Budget Commission to limit Lorain County’s allocation for distribution year 2006 to 30% of the

total LGF/RAF funds received from the State pursuant to R.C. 5747.51(H) and R.C. 5747.53(E).

STATEMENT OF FACTS

This Court's previous opinion recited the facts relevant to this appeal. Four political subdivisions of Lorain County -- the City of Elyria, the City of North Ridgeville, the City of Avon Lake and Amherst Township -- challenge the alternative method of apportionment that was used by the Lorain County Budget Commission to apportion the LGF/RAF funds for distribution years 2004, 2005 and 2006. *Elyria v. Lorain Cty. Budget Comm.*, 117 Ohio St.3d 403, 2008-Ohio-940, ¶ 1.

This appeal arises out of the resolution of the City of Lorain's prior appeal in 2002 of the Budget Commission's apportionment of LGF/RAF funds for the 2003 distribution year that increased the City's LGF/RAF allocations for 2003 and subsequent years and correspondingly decreased such allocations for every other participating subdivision in Lorain County.¹ The City of Lorain contended it was entitled to a greater allocation of the LGF/RAF distributions because, *inter alia*, the alternative method of apportionment the Budget Commission followed for many years had not been properly adopted under the statute.² Appellants were not included among the 23 political subdivisions of Lorain County, including the Budget Commission, named as appellees in the Lorain Appeal. *Id.* ¶ 4. Therefore, the four Appellants herein³ had their

¹ *City of Lorain v. Lorain Cty. Budget Comm.*, BTA No. 2002-T-1865 (the "Lorain Appeal").

² The basic "statutory method of apportionment" of LGF/RAF funds is predicated upon a computation of the "relative need" of the political subdivisions. R.C. 5747.51; former R.C. 5747.62; 147 Ohio Laws, Part II, 3906, 3945-47. However, the county, the most populous city in the county, and a majority of the remaining political subdivisions of the county are allowed to adopt an "alternative method of apportionment" for LGF and RAF distributions. R.C. 5747.53; former R.C. 5747.63; 149 Ohio Laws, Part IV, 7881, 7887-90.

³ Another participating subdivision, the Lorain County Metropolitan Park District ("MetroParks"), was also not named as a party to the Lorain Appeal and also had its RAF allocation decreased for 2003, and eliminated entirely for 2004 and subsequent years, as a result of the resolution of the Lorain Appeal. MetroParks joined in the three original appeals to the

LGF/RAF allocations decreased for 2003 and for subsequent distribution years by the resolution of the Lorain Appeal even though they were not parties to the Lorain Appeal.

As a result of the Lorain Appeal,⁴ the City of Lorain's combined LGF/RAF allocation was increased by \$500,000 for the 2003 distribution year and by \$640,000 (or 3.396% of the total LGF/RAF received from the State) for 2004 and subsequent years. Lorain County bore one-half of the increase in Lorain's allocation (*viz.* \$250,000 for 2003 and a \$320,000 (1.698%) reduction in its allocation for 2004 and each year thereafter), and the other participating subdivisions, including Appellants who were not parties to that appeal, were supposed to bear the other half – a \$250,000 decrease in their aggregate allocation for 2003 and a \$320,000 (or 1.698%) aggregate decrease in their respective annual allocations for 2004 and subsequent years.

The terms of the resolution of the Lorain Appeal were implemented by the adoption of a “new alternative method of apportionment” effective for 2004 and every year thereafter (replacing the alternative formula that had been in place in Lorain County since 1984) to increase the City's allocation by \$640,000 annually (3.396%) over what it had received under the previous alternative method, and to correspondingly decrease the annual allocations of the county by \$320,000 (1.698%) and of every other subdivision (including the allocations to Appellants who were not appellees in the Lorain Appeal) by an aggregate amount of \$320,000 (or 1.698% of the total distributions received from the State). *Id.* ¶ 5.

As a result of the resolution of the Lorain Appeal, Appellants bore *more than half* of the

Board of Tax Appeals (BTA Nos. 2003-T-1533, 2004-T-1166 and 2005-T-1301) but decided not to participate in the first appeal to this Court. Thus, although it remains a party to this appeal as a subdivision of Lorain County, MetroParks was not included as an Appellant in the remand proceedings before the BTA and is not an Appellant in this appeal.

⁴ The parties to that case settled, and the terms of the settlement appear in the record in this case by virtue of correspondence between Lorain County and the City of Lorain. *Id.* ¶ 5; Exhibit 48, Appx. 180; Exhibit 54, Appx. 182.

\$250,000 reduction of 2003 LGF/RAF allocations among all local subdivisions in Lorain County, and similarly bore *more than half* of the \$640,000 (1.698%) annual reduction in the LGF/RAF allocations among the local subdivisions *for the 2004 distribution year and each year thereafter*, even though no Appellant was named as an appellee or participated in the Lorain Appeal.

Appellants appealed to the BTA their respective allocations of LGF/RAF under the “new alternative formula” with respect to distribution year 2004 (BTA No. 2003-M-1533), distribution year 2005 (BTA No. 2004-M-1166) and distribution year 2006 (BTA No. 2005-M-1301). The three notices of appeal to the BTA made two principal allegations of error:

- (i) pursuant to R.C. 5747.55(D), Appellants may not lawfully suffer a reduced allocation of LGF/RAF because they had not been made parties-appellee to the Lorain Appeal which had produced the settlement that required the “new alternative formula;” and
- (ii) the “new alternative method of apportionment” had not been properly adopted pursuant to the timetables and procedures prescribed by statute.

Id. ¶ 6. In addition, in BTA No. 2005-M-1301 only, Appellants contended that their allocations for the 2006 distribution year (and all years thereafter) must be adjusted because the percentage of the municipal population within Lorain County had reached 81% or more in 2005. Therefore, Lorain County was over-allocated by 18.302% because its share allocation for the 2006 distribution-year was limited to 30% of annual LGF/RAF by R.C. 5747.51(H). This meant that each Appellant’s share of the LGF/RAF distributions had to be reallocated and increased for the 2006 distribution-year, based upon Lorain County’s 18.302% over-allocation for that year, as required by R.C. 5747.51(H) and (I) and 5747.53(E).

The City of Lorain’s allocation of LGF/RAF for 2003 and subsequent distribution years

was unalterably fixed by the resolution of the Lorain Appeal. In contrast with that appeal, Appellants named every other participating subdivision in Lorain County as parties-appellee to these three appeals to the BTA, and specifically identified the only subdivision, Lorain County, to have received more than its proper share. Appellants also specified the exact amount they maintain Lorain County was over-allocated for each distribution year in question. They did not name the City of Lorain as being over-allocated because it cannot be considered over-allocated as a matter of law (nor can Appellants even argue it was over-allocated) due to the resolution of the Lorain Appeal before the BTA just one month before the first of these appeals was brought. Appellants do not believe that the City of Lorain's increase, because it resulted from the resolution of the Lorain Appeal before the BTA, can be subsequently relitigated.

Appellants' notices of appeal to the BTA clearly spelled out their position on this issue:

[The budget commission] should have allocated the LGF and RAF for 2004 [, 2005 and 2006] in accordance with the settlement reached in the tax appeal proceeding in [BTA] Case No. 2002-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 2004 LGF and 2004 RAF [and for 2005 and 2006] necessitated by the increased allocation to [the City of] Lorain should have been borne entirely by the allocation to appellee, Lorain County, Ohio...

(*See, e.g.*, Notice of Appeal, BTA No. 2003-M-1533, at 8, ¶ 5, Appx. 55.) Each notice of appeal includes an "Exhibit G" identifying Lorain County as the only over-allocated subdivision and setting forth the exact amount in dollars by which it was over-allocated.

This Court acknowledged the foregoing in its earlier opinion:

In each of the cases before us, [Appellants] had attached a table as Exhibit G to the notice of appeal. In Exhibit G, [Appellants] name[] the political subdivisions in Lorain County that had participated in the allocation of LGF and []RAF. For each subdivision, the table identifies (1) what that subdivision received under the new alternative method of apportionment, (2) what that subdivision would have received under the prior method of apportionment ..., and (3) the amount of any overallocation or

underallocation. On each Exhibit G, only one subdivision was identified as overallocated: Lorain County. The city of Lorain was listed, but the sums in the first two categories were presumed to be identical as a result of the settlement, so the tables showing under- and overallocation were blank.

Id. ¶ 7. Referring to Appellants’ contentions as an “internally coherent theory,” this Court previously characterized the principal error assigned by the notices of appeal:

In effect, the notices of appeal to the BTA argue that the alternative method contemplated by the settlement is binding on the subdivisions of the county, and that settlement involves a contractual increase to Lorain City financed completely by the county. (*Id.* ¶ 24.)

The BTA held an evidentiary hearing in BTA No. 2003-M-1533 applicable to the 2004 distribution year where witness testimony, stipulations and exhibits were received in the record. Instead of addressing the merits, however, the BTA dismissed all three appeals for lack of jurisdiction on the ground that Appellants had failed to identify the City of Lorain as an overallocated subdivision. *Id.* ¶¶ 8, 21. See *City of Elyria v. Lorain Cty. Budget Comm.*, BTA No. 2003-T-1533 (Nov. 17, 2006), unreported.

On March 12, 2008, this Court reversed and remanded these three appeals to the BTA with instructions for further proceedings on the merits in accordance with its opinion. *Id.* ¶¶ 21, 26, 32. As this Court held:

[B]ecause [Appellants’] notices of appeal to the BTA asserted a claim that justified naming the county as the only overallocated subdivision, the BTA had jurisdiction to determine the merits of that claim, and accordingly, the BTA committed legal error when it dismissed for want of jurisdiction.

Id. ¶ 24. The Court set out four basic principles for the BTA to follow on remand:

1. The BTA has jurisdiction to address the merits of Appellants’ assignments of error and the specific relief they seek in accordance with the amounts set forth on Exhibit G to each notice of appeal. (*Id.* ¶ 28.)

2. The BTA cannot entertain any theory of relief inconsistent with Lorain County being the only over-allocated subdivision. (*Id.* ¶ 29.)
3. In other words, Appellants cannot claim, and the BTA could not find, that the previous alternative method of apportionment adopted in 1984 should be reinstated.⁵ (*Id.*)
4. The BTA would not have jurisdiction to apply the statutory method. (*Id.* ¶ 30.)

The two jurisdictional limitations on the BTA imposed by the Court's prior decision affected Appellants' second contention in their notices of appeal (noted above) that the "new alternative formula" had not been properly and timely adopted in implementing the settlement. The Court noted that, if this contention were correct, the BTA would ordinarily have to either reinstate the "old alternative method" utilized prior to the settlement of the Lorain Appeal or impose the "statutory method." However, since the Court found that the BTA would lack jurisdiction in this case to pursue either of those alternatives, in the event the BTA concluded that "new alternative method" had not been properly or timely adopted it would have to dismiss these appeals. *Id.* ¶ 31.

In light of this Court's holding, Appellants withdrew their second and alternative assignment of error in each case on remand: "In light of the Court's ruling, Appellants hereby withdraw on remand their contentions about the manner in which the new alternative method was adopted." (Appellants' Brief on Remand Instructions at 6 n.3.) Appellants *never at any time* withdrew their primary contention on appeal that R.C. 5747.55(D) requires the BTA to reverse the reductions in Appellants' LGF/RAF allocations and restore them to their prior levels because

⁵ As this Court noted, if Appellants were to make such an argument (which they did not make at any time), it could not be squared with the Notices of Appeal because reinstating the previous alternative formula, with adjustment for the settlement, would mean that the City of Lorain was also over-allocated, yet the Notices of Appeal do not identify the City of Lorain as being over-

Appellants were not named as parties to the Lorain Appeal.

The BTA did not hold another hearing but instead invited the parties to submit briefs. In addition, in BTA No. 2005-M-1301 applicable to distribution year 2006, the BTA also declined to address or schedule an evidentiary hearing on the issue of the municipal population of Lorain County reaching 81% or more by 2005, at which point Lorain County's share of annual LGF/RAF under the "new alternative formula" starting with the 2006 distribution year must be limited to 30% of the total funds in accordance with R.C. 5747.51(H) and R.C. 5747.53(E).

As set forth in the Introduction above, the BTA correctly applied R.C. 5747.55(D) to *part* of the "new alternative formula" adopted under the terms of the settlement of the Lorain Appeal. The BTA held that "R.C. 5747.55(D) precludes funds from being removed from taxing subdivisions that were not parties to the appeal." *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. It then explicitly found that:

- (i) "the deduction of \$250,000 [from the aggregation allocation of LGF/RAF for all the other political subdivisions, including Appellants] is based on a settlement of an appeal in which the appellants were not parties" – (*Appellants submit that this finding is absolutely correct and proper*);
- (ii) "The alternative formula [adopted consequent to the settlement of the Lorain Appeal] attempted to *reimburse* Lorain County [in the sense that Lorain County was paying only half of the \$500,000 lump sum portion for distribution year 2003, and the other half was being borne by the other taxing subdivisions] for settlement dollars from parties that were not a part of the [Lorain Appeal]. Such a reimbursement is contrary to law." – (*Appellants maintain that this finding is*

correct and proper as well); and

- (iii) “the [new] alternative formula must be amended for [Appellants] to remove the reimbursement of their pro-rata share of the \$250,000 settlement of the [Lorain Appeal]. As *these funds were allocated to Lorain County*, and the parties 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.” – (*Appellants contend that the BTA erroneously limited this finding that Lorain County was over-allocated to the lump-sum portion of the resolution, affecting only the 2003 distribution year for which LGF/RAF funds had already been distributed, but refused to apply the same provisions of R.C. 5747.55(D) to the remaining terms of the settlement, for the prospective distribution of LGF/RAF funds for the 2004, 2005 and 2006 distribution years, that were also implemented by the “new alternative formula.”*)

Id. (emphasis supplied).

The BTA erred in limiting its application of R.C. 5747.55(D) only to that part of the settlement of the Lorain Appeal relating to the 2003 distribution year and calling for a lump-sum monetary payment (because the LGF/RAF allocation and distribution for that year had already occurred) and not to the remainder of the settlement relating to the 2004, 2005 and 2006 distribution years. The settlement was not limited to distribution year 2003 as the BTA appears to have erroneously believed. The resolution of the Lorain Appeal was a single, unitary resolution of the dispute raised by the City of Lorain that affected all subdivisions of the County, even the ones who were not parties to that appeal, and the BTA erred in dividing or differentiating how the “new alternative formula” implemented that resolution. In both parts of

the settlement, Appellants' share of LGF/RAF funds were being decreased as a result of the Lorain Appeal to which they were not parties. And in both parts, the "new alternative formula" was the instrument that implemented the reduction in Appellants' respective shares of LGF/RAF funding.

There was only one distinction between the two parts of the settlement, and that distinction is irrelevant for R.C. 5747.55(D) purposes. For the *retrospective part* of the resolution of the Lorain Appeal, even though Lorain County's share was one-half of the \$500,000 lump-sum amount, Lorain County initially paid the entire \$500,000 to the City of Lorain. Instead of requiring each taxing subdivision (including Appellants) to write a check to Lorain County for their 50% aggregate share, the "new alternate formula" deducted each subdivision's *pro rata* share of \$250,000 from its respective LGF/RAF distribution for 2004. For the *prospective part* of the resolution of the Lorain Appeal applicable to distribution years 2004, 2005 and 2006, Lorain County was still "paying" one-half of the \$640,000 annual settlement amount and the other taxing subdivisions (including Appellants) were still responsible in the aggregate for the other half. Since this part of the settlement operated prospectively, the "new alternative formula" implemented the result by reducing *pro rata* the allocated percentage of LGF/RAF for each subdivision, including Appellants, for each distribution year beginning in 2004 and thereafter, in order to total \$320,000 annually – constituting "their" half of the result.

Thus, the "new alternative formula" reduced the allocations for the 2004, 2005 and 2006 distributions just as it reduced the allocation for the 2003 distribution. It all resulted from the resolution of the Lorain Appeal to which Appellants were not parties. The second part of the resolution is just as contrary to and violative of R.C. 5747.55(D) as the first part.

Furthermore, the BTA mischaracterized the resolution as a "\$250,000 settlement." As shown above, the resolution of the Lorain Appeal involved a settlement, implemented by the

“new alternative formula,” consisting of (i) a \$500,000 lump sum payment to the City of Lorain for 2003, and (ii) a \$640,000 (or 3.396%) increase in the City of Lorain’s allocated share of annual LGF/RAF funds for 2004 and subsequent distribution years paid for by a concomitant \$640,000 (3.396%) annual reduction of the remaining taxing subdivisions’ share the total LGF/RAF funds received from the State. In both instances, Lorain County bore one-half of the payment/reduction but was nevertheless over-allocated because Appellants should not have borne any payment/reduction for either part of the resolution of the Lorain Appeal.

Thus, the 2004 “new alternative formula” produced by the Lorain Appeal caused *two reductions* to Appellants’ allocations. *First*, the formula reduced the tax-levying subdivisions’ aggregate allocations for the 2003 distribution year by \$250,000, of which Appellants collectively bore over 52%:

City of Elyria	\$ 79,767 (31.097%)
City of North Ridgeville	\$ 25,790 (10.316%)
City of Avon Lake	\$ 21,200 (8.480%)
Amherst Township	\$ <u>3,812</u> (1.525%)
Total:	\$ 130,569

(2004 “New Alternative Formula,” Appx. 188.) The BTA correctly held that the Budget Commission’s underallocation of Appellants’ respective shares of the 2003 LGF/RAF distributions in these amounts violated R.C. 5747.55(D). *Second*, the 2004 “new alternative formula” reduced by \$320,000 the subdivisions’ aggregate annual allocations for each of the 2004, 2005 and 2006 distribution years, impacting Appellants’ allocated shares as follows:

<u>Appellant</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
City of Elyria	\$ 101,131.94	\$ 101,031.14	\$ 101,176.96
City of North Ridgeville	\$ 32,097.24	\$ 32,064.85	\$ 32,111.63
City of Avon Lake	\$ 27,544.30	\$ 27,500.09	\$ 27,538.76
Amherst Township	\$ <u>5,416.78</u>	\$ <u>5,411.45</u>	\$ <u>5,418.78</u>
Total:	\$ 166,190.26	\$ 166,007.53	\$ 166,246.13

(Exhibit “G” to each BTA Notice of Appeal, Appx. 62, 64, 84, 86, 112, 114.) However, the

BTA erred in holding that the underallocation of Appellants' respective shares for these years in these amounts did not violate R.C. 5747.55(D). It is illogical and inconsistent for the BTA to conclude that the first reduction caused by the "new alternative formula" violated R.C. 5747.55(D), and to order the Budget Commission to adjust that alternative method of apportionment accordingly, but not to conclude that the second reduction similarly violated R.C. 5747.55(D), and not to order the formula to be adjusted to eliminate the second part of the reduction as well.

Also as noted in the Introduction above, the BTA's error appears to be the product of its misunderstanding about Appellant's withdrawal of their second assignment of error:

In the present matter, the appellants have withdrawn their claim as to the manner in which the alternative formula for distribution-year 2004 was approved. ***Therefore, the board finds the alternative formula for the 2004-distribution year to be valid.***

Id. at 8, Appx. 30 (emphasis supplied). It is a *non sequitur* for the BTA to conclude from Appellants' withdrawal of their contention that the "new alternative formula" had not been properly or timely adopted that "therefore" the formula was valid. Moreover, Appellants did not abandon their claim that the "new alternative formula" was invalid because it contravened R.C. 5747.55(D) as applied to them. The BTA's decision appears to misunderstand this crucial point. After finding the "new alternative formula" for the 2004 distribution year to be valid, the BTA also found the allocations for the 2005 and 2006 distribution years to be lawful on the same basis. *Id.* at 10, Appx. 32.

Appellants timely filed their appeal to this Court on March 31, 2010. (Notice of Appeal, Appx. 1.)

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

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.

R.C. 5747.55(D) provides, in pertinent part, that "no change shall, in any amount, be made in the amount allocated to participating subdivisions not appellees" in a BTA appeal. *Accord Pal v. Hamilton Cty. Budget Comm.* (1996), 74 Ohio St.3d 196, 199 ("necessary parties under R.C. 5705.37 are those subdivisions within the county which are affected by the appeal") ("[b]y this decision, R.C. 5747.55 and 5705.37 are now uniform in requiring that all tax-levying entities whose funding is affected by the outcome of [a tax appeal] are necessary parties to an appeal to the BTA and must be named as appellees in the notice of appeal"); *City of Canton v. Stark Cty. Budget Comm.* (1988), 40 Ohio St.3d 243, 249 ("no change may be made in the amount allocated to the participating subdivisions that are not appellees before the BTA"). Indeed, the BTA acknowledged this principle in its order entered in the Lorain Appeal:

The purpose of R.C. 5747.55(D) is two-fold. It not only protects a subdivision, the allocation of which is not challenged, from undergoing the expense of litigation, but also ensures that its share of the Local Government Fund will not be endangered by such an appeal.

City of Lorain v. Lorain Cty. Budget Comm., BTA No. 2002-T-1865, Order Denying Motion to Exclude (May 9, 2003), at 3, Appx. 176.

It is undisputed that the "new alternative formula" arose from and was mandated by the resolution of the Lorain Appeal in which none of the Appellants was named as a party. Indeed, only 22 out of Lorain County's 33 tax-levying subdivisions (other than the City of Lorain and the County itself) were named as appellees in the Lorain Appeal. The largest cities in the county

besides Lorain – Elyria, North Ridgeville and Avon Lake – were conspicuous among the subdivisions *not named* as appellees in that case.

The provisions of R.C. 5747.55(D) prohibit the Budget Commission from applying the “new alternative formula” to reduce Appellants’ allocations of LGF/RAF for the 2004 distribution year and thereafter precisely because Appellants were not named as parties to the appeal that resulted in the reduced allocations.

In its prior opinion in this case, this Court has reaffirmed the proposition that parties to an appeal to the BTA must strictly comply with the requirements of R.C. 5747.55:

By requiring an appellant to name the appellees and identify their potential liability, the statute furnishes notice to those other subdivisions about what they stand to lose and thereby puts them on guard to defend.

Elyria v. Lorain Cty. Budget Comm., 117 Ohio St.3d 403, 2008-Ohio-940, ¶ 29, *citing Union Twp. v. Butler Cty. Budget Comm.* (1995), 101 Ohio App.3d 212, 218. Moreover, in discussing the meaning of R.C. 5747.55(D) and (E), this Court has held:

The clear meaning of these provisions is that the amount to be allocated upon appeal is the total amount that has been allocated to the appellant and the appellees before the BTA. No change may be made in the 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.

In other words, no harm of any kind can come to the other participating subdivisions of the county who are not named as appellees in an appeal to the BTA. *Village of Mogadore v. Summit Cty. Budget Comm.* (1987), 36 Ohio App.3d 42, 44. An appeal to the BTA creates, in effect, “a limited fund equaling the total allocations made to the county’s subdivisions which, on appeal, must be allocated between them.” *Shawnee Twp. v. Allen Cty. Budget Comm.* (1991), 58 Ohio St.3d 14, 16. Thus, it is clear that R.C. 5747.55(D) requires that any subdivision whose

allocation of LGF/RAF could be in jeopardy has the right to defend itself in the particular case before the BTA or its allocation cannot be reduced. The primary principle is that R.C. 5747.55(D) protects any entity not named as a party in an appeal to the BTA from having its allocation reduced or endangered by the result in that appeal.

Since the “new alternative method of apportionment” implemented the resolution of the Lorain Appeal, R.C. 5747.55(D) applies to every distribution year for which the Budget Commission utilizes it to allocate LGF/RAF distributions to Appellants in accordance with the percentages adopted pursuant to that resolution of the Lorain Appeal. The BTA failed to apply R.C. 5747.55(D) to every distribution year affected by the “new alternative formula,” and this Court should correct that error by (i) reversing the decision of the BTA, (ii) restoring Appellants’ allocations of LGF and RAF to their former percentages so that they are unaffected by the resolution of the Lorain Appeal, and (iii) correspondingly reducing the percentage overallocated to Lorain County.

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.

Appellants raised an additional issue in their Notice of Appeal to the BTA from the Budget Commission’s allocation of LGF/RAF funds for the 2006 distribution year. (*See* Notice of Appeal, BTA No. 2005-M-1301, at 12, ¶ 8, Appx. 104.) By 2005, the municipal population of Lorain County reached a level in excess of 81% of the total county population. In accordance with R.C. 5747.51(H) and R.C. 5747.53(E), the Budget Commission should have limited the County’s allocation of LGF/RAF for the 2006 distribution year to 30% of the total funds received from the State. The remaining 70% should have been allocated to the other tax-levying

subdivisions of the county, including Appellants, on a *pro rata* basis.

R.C. 5747.51(H) provides, in pertinent part:

[T]he maximum proportionate share of a county shall not exceed the following maximum percentages of the total estimate of the undivided local government fund governed by the relationship of the percentage of the population of the county that resides within municipal corporations within the county to the total population of the county as reported in the reports on population in Ohio by the department of development as of the twentieth day of July of the year in which the tax budget is filed with the budget commission:

Percentage of municipal population within the county: Percentage share of the county shall not exceed:

Less than [41%]: Sixty per cent

[41%] or more but less than [81%]: Fifty per cent

[81%] or more: Thirty per cent

Where the proportionate share of the county exceeds the limitations established in this division, *the budget commission shall adjust the proportionate shares* determined pursuant to this division so that the proportionate share of the county does not exceed these limitations, *and it shall increase the proportionate shares of all other subdivisions on a pro rata basis.* (Emphasis supplied.)

Similarly, R.C. 5747.53(E) provides, in pertinent part:

The limitations set forth in section 5747.51 of the Revised Code, stating the maximum amount that the county may receive from the undivided local government fund ..., are applicable to any alternative method of apportionment authorized under this section. (Emphasis supplied.)

However, the BTA failed to address or hold a hearing on this issue in the appeal of the 2006 distribution-year allocation (BTA No. 2005-M-1301). The BTA also erred by failing to limit Lorain County's share allocation for the 2006 distribution-year to 30% of annual LGF/RAF in accordance with R.C. 5747.51(H), and by failing to reallocate each Appellant's share of the LGF/RAF amounts for the 2006 distribution-year, based upon Lorain County's 18.302% over-

allocation for that year, totaling \$3,469,374.87, as required by R.C. 5747.51(H) and (I) and 5747.53(E). As set forth in Exhibit “I” to Appellants’ Notice of Appeal in Case No. 2005-M-1301 (Appx. 121-123), the 18.302% overallocation to Lorain County on this basis alone resulted in Appellants’ *pro rata* share of the total LGF/RAF distributions received from the State for the 2006 distribution year being underallocated by the following amounts:

City of Elyria	\$ 899,916.08
City of North Ridgeville	\$ 290,412.06
City of Avon Lake	\$ 239,183.88
Amherst Township	<u>\$ 42,667.62</u>
Total:	\$ 1,472,179.64

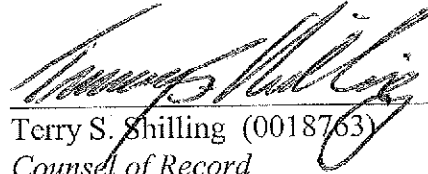
The Court should correct the BTA’s error by reversing its decision and ordering the Budget Commission to limit Lorain County’s allocation for distribution year 2006 to 30% of the total LGF/RAF funds received from the State pursuant to R.C. 5747.51(H) and R.C. 5747.53(E), and to reallocate the distributions to the other tax-levying subdivisions of the county in accordance with R.C. 5747.51(H) and R.C. 5747.51(I).

CONCLUSION

Accordingly, for the foregoing reasons, the Court should reverse the Decision and Order entered by the BTA on March 31, 2010, and order the Budget Commission to reallocate Appellants’ respective shares of the LGF and RAF distributions for the 2003, 2004, 2005 and 2006 distribution years in accordance with the provisions of R.C. 5747.55(D), R.C. 5747.51(H), R.C. 5747.51(I) and R.C. 5747.53(E).

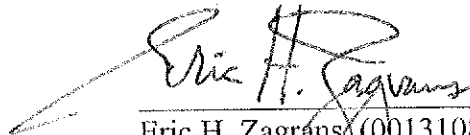
Dated: June 7, 2010

Respectfully submitted,



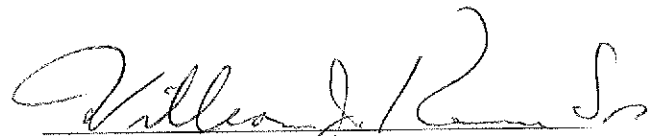
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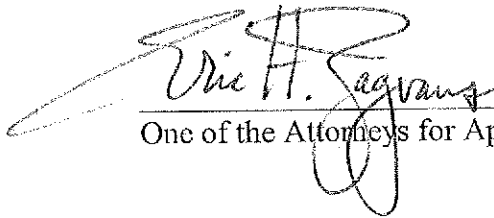


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Merit Brief of Appellants City of Elyria, Ohio, City of North Ridgeville, Ohio, City of Avon Lake, Ohio, and Amherst Township, Ohio, together with the Appendix in four separate volumes, were served by ordinary U.S. mail, postage prepaid, 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, counsel for Appellees, Richard A. Levin, Tax Commissioner of Ohio, *et al.*; John T. Sunderland, THOMPSON HINE LLP, 10 West Broad Street, Suite 700, Columbus, Ohio 43215-3435, counsel for Appellees, Lorain County and Lorain County Commissioners; Gerald A. Innes, Assistant Prosecuting Attorney for Lorain County, OFFICE OF THE LORAIN COUNTY PROSECUTOR, Lorain County Courthouse, Elyria, Ohio 44035, counsel for Appellee, Lorain County Budget Commission; and John R. Varanese, 85 East Gay Street, Suite 1000, Columbus, Ohio 43215-3118, counsel for Appellee, City of Lorain, Ohio, and all other Appellees herein, this 7th day of June, 2010.


Eric H. Seagraves

One of the Attorneys for Appellants

IN THE SUPREME COURT OF OHIO

CITY OF ELYRIA, OHIO,	)	CASE NO. 10-0564
CITY OF NORTH RIDGEVILLE, OHIO,)	
CITY OF AVON LAKE, OHIO, and)	
AMHERST TOWNSHIP, OHIO,)	
)	
Appellants,	)	On Appeal from the Ohio Board of
vs.	)	Tax Appeals
)	
RICHARD A. LEVIN, Tax Commissioner)	Case Nos. 2003-M-1533
of Ohio, <i>et al.</i> ,)	2004-M-1166
)	2005-M-1301
Appellees.)	

APPENDIX

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Please note: This Appendix is consecutively numbered in the upper right-hand corner of each Appendix page pursuant to S. Ct. Prac. R. 6.2(B)(5).

The page numbers appearing in the lower right-hand corner are preserved for the Court's convenience from the Appendix filed in the preceding Supreme Court appeal.

IN THE SUPREME COURT OF OHIO

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CITY OF ELYRIA, OHIO,)
CITY OF NORTH RIDGEVILLE, OHIO,)
CITY OF AVON LAKE, OHIO, and)
AMHERST TOWNSHIP, OHIO,)

Appellants,)

vs.)

RICHARD A. LEVIN, Tax Commissioner)
of Ohio; BOARD OF COUNTY)
COMMISSIONERS OF LORAIN COUNTY,)
OHIO; COUNTY OF LORAIN, OHIO;)
LORAIN COUNTY BUDGET)
COMMISSION; CITY OF LORAIN, OHIO;)
CITY OF AMHERST, OHIO; CITY OF)
AVON, OHIO; CITY OF OBERLIN, OHIO;)
CITY OF SHEFFIELD LAKE, OHIO; CITY)
OF VERMILION, OHIO; VILLAGE OF)
GRAFTON, OHIO; VILLAGE OF KIPTON,)
OHIO; VILLAGE OF LaGRANGE, OHIO;)
VILLAGE OF ROCHESTER, OHIO;)
VILLAGE OF SHEFFIELD, OHIO;)
VILLAGE OF SOUTH AMHERST, OHIO;)
VILLAGE OF WELLINGTON, OHIO;)
BRIGHTON TOWNSHIP, OHIO; BROWN-)
HELM TOWNSHIP, OHIO; CAMDEN)
TOWNSHIP, OHIO; CARLISLE TOWNSHIP,)
OHIO; COLUMBIA TOWNSHIP, OHIO;)
EATON TOWNSHIP, OHIO; ELYRIA)
TOWNSHIP, OHIO; GRAFTON TOWNSHIP,)
OHIO; HENRIETTA TOWNSHIP, OHIO;)
HUNTINGTON TOWNSHIP, OHIO;)
LaGRANGE TOWNSHIP, OHIO; NEW)
RUSSIA TOWNSHIP, OHIO; PENFIELD)
TOWNSHIP, OHIO; PITTSFIELD TOWN-)
SHIP, OHIO; ROCHESTER TOWNSHIP,)
OHIO; SHEFFIELD TOWNSHIP, OHIO;)
WELLINGTON TOWNSHIP, OHIO; and)
LORAIN COUNTY METROPOLITAN)
PARK DISTRICT,)

Appellees.)

CASE NO.

10-0564

Appeal from the Board of Tax Appeals

Ohio Board of Tax Appeals Case Nos.

2003-M-1533

2004-M-1166

2005-M-1301

**NOTICE OF APPEAL OF APPEL-
LANTS, CITY OF ELYRIA, OHIO;
CITY OF NORTH RIDGEVILLE,
OHIO; CITY OF AVON LAKE,
OHIO; and AMHERST TOWNSHIP,
OHIO**

FILED
MAR 31 2010
CLERK OF COURT
SUPREME COURT OF OHIO

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

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Lake, Ohio*

NOTICE OF APPEAL OF APPELLANTS

Appellants, City of Elyria, Ohio (“Elyria”), City of North Ridgeville, Ohio (“North Ridgeville”), City of Avon Lake, Ohio (“Avon Lake”) and Amherst Township, Ohio (“Amherst”), hereby give notice of their appeal as of right to the Supreme Court of Ohio, pursuant to R.C. 5717.04 and Rules 2.1(B) and 2.3(A) of the Supreme Court Rules of Practice, from the Decision and Order of the Ohio Board of Tax Appeals entered in *City of Elyria, et al. vs. Lorain County Budget Commission, et al.*, Case Nos. 2003-M-1533, 2004-M-1166 and 2005-M-1301, entered on March 2, 2010, a true copy of which is attached hereto and incorporated by reference herein.

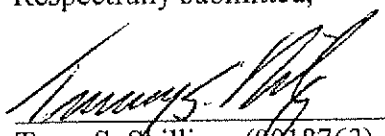
Appellants complain of the following errors in the Decision and Order of the Board of Tax Appeals:

1. In light of the Board’s finding that R.C. 5747.55(D) precludes reducing the shares of state Local Government Fund (LGF) and Revenue Assistance Fund (RAF) allocations from taxing subdivisions that were not parties to an earlier appeal to the Board, the Board of Tax Appeals erred in finding the alternative formula for the 2004 distribution-year (and subsequent 2005 and 2006 distribution-years) to be valid, as the result of erroneously finding that Appellants had withdrawn their claim as to the manner in which the alternative formula for distribution-year 2004 was approved, notwithstanding Appellants’ contention (never withdrawn) that the percentages of the LGF/RAF due to them for the 2004 distribution-year (and subsequent 2005 and 2006 distribution-years) could not lawfully be reduced, pursuant to R.C. 5747.55(D), based on the settlement of an earlier year’s appeal in which they were not named as parties.

2. The Board of Tax Appeals erred in finding that Appellants had withdrawn their claim as to the manner in which the alternative formula for distribution-year 2004 (and subsequent distribution-years) was approved, when in reality all Appellants had withdrawn was their subordinate contention that the new alternative method of apportionment had not been timely and properly adopted under the timetable and procedures prescribed by R.C. 5747.53 and 5747.63. In fact, Appellants continue to press their claim that the manner of approval of the alternative formula for distribution-year 2004 (and applicable to subsequent distribution-years) was completely unlawful because it was the product of the settlement of the earlier appeal in which Appellants were not named as parties in violation of R.C. 5747.55(D).
3. The Board of Tax Appeals erred in Case No. 2005-M-1301 in failing to address or hold a hearing on the issue Appellants had raised that, since the percentage of the municipal population within Lorain County had reached 81% or more, Lorain County's share allocation for the 2006 distribution-year was limited to 30% of annual LGF/RAF by R.C. 5747.51(H), and further erred in failing to reallocate each Appellant's share of the LGF/RAF amounts for the 2006 distribution-year, based upon Lorain County's 18.302% over-allocation for that year, as required by R.C. 5747.51(H) and (I) and 5747.53(E).

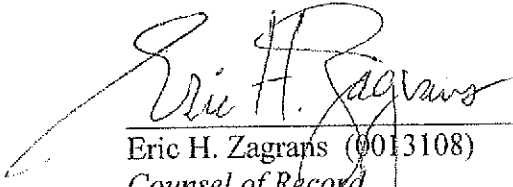
Dated: March 31, 2010

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City of Elyria, City of Avon Lake,)	CASE NOS. 2003-M-1533
City of North Ridgeville, and Amherst)	2004-M-1166
Township, ¹	)	2005-M-1301
)	
Appellants,	)	(BUDGET COMMISSION)
)	(ULGF & ULGRAF)
)	
vs.)	DECISION AND ORDER
)	
Lorain County Budget Commission,)	
et al.,)	
)	
Appellees.)	

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Entered MAR 02 2010

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

These matters have been remanded to the Board of Tax Appeals following a decision by the Ohio Supreme Court in *Elyria v. Lorain Cty. Budget Comm.*, 117 Ohio St.3d 403, 2008-Ohio-940. This board had previously dismissed the appeals, finding that the notices of appeal filed by appellants, city of Elyria, city of Avon Lake, city of North Ridgeville, Amherst Township, and the Lorain County Metropolitan Park District, in each case were jurisdictionally deficient. The Ohio Supreme Court reversed, and directed this board to consider whether the Lorain County Budget Commission ("LCBC") properly allocated the undivided local government fund ("ULGF") and the undivided local government revenue assistance fund ("ULGRAF"). The court further clarified the scope of our jurisdiction on remand:

"First, *** the BTA has jurisdiction to determine the validity of Elyria's primary claim for relief on the merits. Accordingly, on remand, the BTA will have the authority to decide whether Elyria is entitled to the specific relief reflected by the figures in Exhibit G of the notice of appeal.

"Second, the BTA on remand will not have jurisdiction to entertain any theory of relief not consistent with Elyria's identification of Lorain County as the only overallocated subdivision. In *Union Twp.*, 101 Ohio App.3d at 218, ***, the court of appeals explained that the 'purpose of appeal is to permit a subdivision receiving less than its statutory [or alternative-method] share to seek to recover that share,' and it does so from the fund consisting of 'the over-allocations to the named appellees.' By requiring an appellant to name the appellees and identify their potential liability, the statute furnishes notice to those other subdivisions about what they stand to lose and thereby puts them on guard to defend. It follows that the BTA

may not exercise jurisdiction to consider a claim that the earlier alternative method of apportionment should be completely reinstated. As the BTA correctly found, this theory cannot be squared with the notice of appeal because reinstating the earlier formula, with adjustment for the settlement, would mean that Lorain City has been overallocated, but the notice of appeal does not identify that city as being overallocated.

“Finally, the BTA will not have jurisdiction to apply the statutory method. We understand that the BTA, in the decision under review, has already found that the statutory method is not jurisdictionally before it, and the appeal to this court did not challenge that disposition. See *Dayton-Montgomery Cty. Port Auth.*, 113 Ohio St.3d 281, 2007-Ohio-1948, 865 N.E.2d 22, ¶33.” Id., ¶28-30.

Our consideration relates to three matters filed with the Board of Tax Appeals regarding the propriety of actions of the LCBC for distribution years 2004, 2005, and 2006. As the Supreme Court noted in *Elyria v. Lorain Cty. Budget Comm.* 117 Ohio St.3d 403, 2008-Ohio-940, its consideration of these matters, the present appeal was instituted after a settlement of an earlier appeal to this board. In 2002, the city of Lorain challenged the amount apportioned to it by the LCBC for distribution year 2003. The settlement of that claim resulted in an agreement by the parties to the settlement that the city of Lorain would receive a lump-sum payment of \$500,000 for the 2003 distribution year. Further, the parties agreed that a new alternative formula would be adopted for the 2004 distribution year that would adjust apportionment percentages. The adjustment of the apportionment percentages had the effect of

increasing the funds received by the city of Lorain and decreasing the funds received by all of the remaining taxing subdivisions.²

In order to effectuate the settlement, Lorain County paid the agreed lump sum of \$500,000. However, as part of the agreement, Lorain County agreed to absorb only one-half of the settlement amount. It was agreed by the participants to the settlement that the county would be reimbursed for the remaining \$250,000 from 2004 ULGF and ULGRAF funds. H.R. at 59. The participants to the settlement then voted into place a new alternative formula. The new formula changed the percentages due the subdivisions by increasing the percentages to the city of Lorain and decreasing percentages to every other taxing subdivision receiving ULGF and ULGRAF funds. Additionally, the new alternative formula increased Lorain County's allocation by \$250,000 for distribution year 2004 only. The \$250,000 increase (and corresponding pro rata deduction to each taxing subdivision) reimbursed the county for one-half of the settlement paid by the county to the city. Appellee's Ex. H.

Appellants claim that the percentage amounts due them in 2003 cannot be changed in subsequent years if the basis for that change is a settlement of an earlier year's appeal in which they were not named as parties. Appellants claim that R.C. 5747.55 precludes funds of a non-participating subdivision from being changed. Indeed, R.C. 5747.55 provides:

² The Lorain County Metropolitan Park District's allocation was reduced to zero.

“The action of a county budget commission under sections R.C. 5747.51 and 5747.62 of the Revised Code may be appealed to the board of tax appeals in the manner and with the effect provided in section 5705.37 of the Revised Code, in accordance with the following rules:

“***

“(C) There shall also be attached to the notice of appeal a statement showing:

“(1) The name of the fund involved, the total amount in dollars allocated, and the exact amount in dollars allocated to each participating subdivision.

“(2) The amount in dollars which the complaining subdivision believes it should have received;

“(3) 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.

“(D) *Only the participating subdivisions named pursuant to division (C) of this section are to be considered as appellees before the board of tax appeals and no change shall, in any amount, be made in the amount allocated to participating subdivisions not appellees.*” (Emphasis added.)

We agree with the appellants in part.

While the appellants originally challenged the manner in which the 2004 alternative formula (sometimes referred to as the “new alternative formula” to distinguish it from the alternative formula that had previously been in place and had been challenged by the city of Lorain), they have withdrawn that claim. Appellants’ brief regarding Ohio Supreme Court’s instructions to the board on remand, at 6. Therefore, in accordance with the court’s instructions to this board, the only issue for

our consideration is whether the appellants are entitled to additional funds from Lorain County, the entity identified through the notice of appeal as the "overallocated" subdivision.

We first consider the appellants' claim that the change made to the new alternative formula can never affect those taxing subdivisions that either were not a part of the earlier appeal or did not agree to the change. To fully understand appellants' position, a review of how local government funds are apportioned is necessary. Each year the Tax Commissioner estimates the amount to be paid into the local government fund for distribution for the following year. R.C. 5747.51. The budget commission then apportions funds to taxing subdivisions yearly. R.C. 5747.51.

Under R.C. 5745.51, local government funds are apportioned to taxing subdivisions on the basis of need. The determination of need is made by each county budget commission after a consideration of statutorily defined resources and expenditures of each subdivision. However, R.C. 5747.53 provides for an alternative method of apportionment. Under the alternative method, a county budget commission may consider "any factor" it deems to be "appropriate and reliable" in apportioning funds.³ R.C. 5747.53(D). The alternative method must be approved by the board of county commissioners, the legislative authority of the city located wholly or partially in the county with the greatest population, and the majority of the boards of township

³ The statute provides for certain minimums and maximums that are not in issue in this appeal.

trustees and legislative authorities of municipal corporations located wholly or partially within the county. R.C. 5747.53(B).

In the present matter, the appellants have withdrawn their claim as to the manner in which the alternative formula for distribution-year 2004 was approved. Therefore, the board finds the alternative formula for the 2004-distribution year to be valid. While we acknowledge that the appellants were not a part of the majority of taxing subdivisions voting for the new alternative formula, a sufficient number of taxing subdivisions did vote for the new alternative formula so that affirmative votes of the appellants were not necessary for passage. The appellants claim, however, that because the new alternative formula was conceived as a settlement of an earlier distribution year, and because they were not parties to the earlier settlement, their allocations cannot be changed in later years. We do not agree.

As the budget commission acts yearly, it follows that appeals from an action of a budget commission relate to a specific year. *South Russell v. Geauga Cty. Budget Comm.* (1984), 12 Ohio St.3d 126. R.C. 5747.55(D), therefore, guarantees the funds of a non-participating subdivision only for that year in which it was not included in an appeal. The statute does not address the effect of settlements on distributions in subsequent years.

There is no requirement that an alternative formula be approved by all taxing subdivisions within a county. Therefore, it may always be the case that an individual taxing subdivision may not wish to have its allocation adjusted. Nevertheless, the legislature has concluded that a county, the most populous city in

that county, and a majority of other taxing subdivisions have the power to make allocation adjustments, relying upon any factor considered appropriate and reliable. The board concludes that one factor taken into consideration in this matter was the settlement of litigation.

Once an alternative method that has no time limits is approved, it remains in force for ensuing years until it is revised, amended, or repealed pursuant to statute. *Reynoldsburg v. Licking Cty. Budget Comm.*, 104 Ohio St.3d 453, 2004-Ohio-6773; *Lancaster v. Fairfield Cty. Budget Comm.* (1999), 86 Ohio St.3d 137. While the appellants may be unwilling participants, they are participants nonetheless. Were we to agree with the appellants' claim, it could have the effect of denying a change to an alternative formula, even if the votes are present for such a change. The General Assembly did not provide an alternative for the minority of subdivisions, other than the county or the most populous city, which may not agree with the majority. Therefore, this board concludes that the appellants must accept the allocations made under the new alternative formula for tax years 2005 and 2006.


However, for distribution year 2004, the alternative formula included what the parties characterized as a "carve out," a fund of money to reimburse Lorain County for funds it provided to settle the 2002 challenge by the city of Lorain relating to funds apportioned for distribution-year 2003. It is clear from the record that the alternative formula approved for 2004 includes this amount for only distribution year 2004. Attachment to Appellant's Ex. 53, approved September 24, 2003. It is also clear from the record that these funds are paid to Lorain County from all the taxing

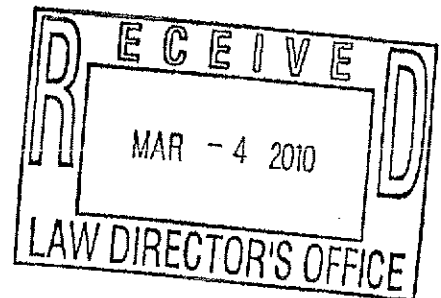
subdivisions except the city of Lorain, not only the subdivisions that were parties to the 2002 appeal.

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 the 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 settlement. The alternative formula attempted to reimburse Lorain County for settlement dollars from parties that were not a part of the 2003-allocation appeal. Such a reimbursement is contrary to law.

Therefore, the board finds that the 2004 alternative formula must be amended for the city of Elyria, the city of Avon Lake, the city of North Ridgeville, and Amherst Township to remove the reimbursement of their pro-rata share of the \$250,000 settlement of the 2002 appeal. As these funds were allocated to Lorain County, and the parties 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. The matter is remanded to the LCBC for reallocation of the 2004 distribution year only. The alternative formulas in place for the 2005 and 2006 years are found to be lawful, and are affirmed.

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.


Sally F. Van Meter, Board Secretary



CERTIFICATE OF SERVICE

We hereby certify that a copy of this Notice of Appeal was sent by certified mail to Counsel for Appellees and to all Appellees as herein listed on the 31st day of March, 2010:

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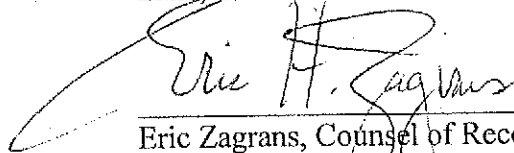
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Entered

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

These matters have been remanded to the Board of Tax Appeals following a decision by the Ohio Supreme Court in *Elyria v. Lorain Cty. Budget Comm.*, 117 Ohio St.3d 403, 2008-Ohio-940. This board had previously dismissed the appeals, finding that the notices of appeal filed by appellants, city of Elyria, city of Avon Lake, city of North Ridgeville, Amherst Township, and the Lorain County Metropolitan Park District, in each case were jurisdictionally deficient. The Ohio Supreme Court reversed, and directed this board to consider whether the Lorain County Budget Commission ("LCBC") properly allocated the undivided local government fund ("ULGF") and the undivided local government revenue assistance fund ("ULGRAF"). The court further clarified the scope of our jurisdiction on remand:

"First, *** the BTA has jurisdiction to determine the validity of Elyria's primary claim for relief on the merits. Accordingly, on remand, the BTA will have the authority to decide whether Elyria is entitled to the specific relief reflected by the figures in Exhibit G of the notice of appeal.

"Second, the BTA on remand will not have jurisdiction to entertain any theory of relief not consistent with Elyria's identification of Lorain County as the only overallocated subdivision. In *Union Twp.*, 101 Ohio App.3d at 218, ***, the court of appeals explained that the 'purpose of appeal is to permit a subdivision receiving less than its statutory [or alternative-method] share to seek to recover that share,' and it does so from the fund consisting of 'the over-allocations to the named appellees.' By requiring an appellant to name the appellees and identify their potential liability, the statute furnishes notice to those other subdivisions about what they stand to lose and thereby puts them on guard to defend. It follows that the BTA

may not exercise jurisdiction to consider a claim that the earlier alternative method of apportionment should be completely reinstated. As the BTA correctly found, this theory cannot be squared with the notice of appeal because reinstating the earlier formula, with adjustment for the settlement, would mean that Lorain City has been overallocated, but the notice of appeal does not identify that city as being overallocated.

“Finally, the BTA will not have jurisdiction to apply the statutory method. We understand that the BTA, in the decision under review, has already found that the statutory method is not jurisdictionally before it, and the appeal to this court did not challenge that disposition. See *Dayton-Montgomery Cty. Port Auth.*, 113 Ohio St.3d 281, 2007-Ohio-1948, 865 N.E.2d 22, ¶33.” *Id.*, ¶28-30.

Our consideration relates to three matters filed with the Board of Tax Appeals regarding the propriety of actions of the LCBC for distribution years 2004, 2005, and 2006. As the Supreme Court noted in *Elyria v. Lorain Cty. Budget Comm.* 117 Ohio St.3d 403, 2008-Ohio-940, its consideration of these matters, the present appeal was instituted after a settlement of an earlier appeal to this board. In 2002, the city of Lorain challenged the amount apportioned to it by the LCBC for distribution year 2003. The settlement of that claim resulted in an agreement by the parties to the settlement that the city of Lorain would receive a lump-sum payment of \$500,000 for the 2003 distribution year. Further, the parties agreed that a new alternative formula would be adopted for the 2004 distribution year that would adjust apportionment percentages. The adjustment of the apportionment percentages had the effect of

increasing the funds received by the city of Lorain and decreasing the funds received by all of the remaining taxing subdivisions.²

In order to effectuate the settlement, Lorain County paid the agreed lump sum of \$500,000. However, as part of the agreement, Lorain County agreed to absorb only one-half of the settlement amount. It was agreed by the participants to the settlement that the county would be reimbursed for the remaining \$250,000 from 2004 ULGF and ULGRAF funds. H.R. at 59. The participants to the settlement then voted into place a new alternative formula. The new formula changed the percentages due the subdivisions by increasing the percentages to the city of Lorain and decreasing percentages to every other taxing subdivision receiving ULGF and ULGRAF funds. Additionally, the new alternative formula increased Lorain County's allocation by \$250,000 for distribution year 2004 only. The \$250,000 increase (and corresponding pro rata deduction to each taxing subdivision) reimbursed the county for one-half of the settlement paid by the county to the city. Appellee's Ex. H.

Appellants claim that the percentage amounts due them in 2003 cannot be changed in subsequent years if the basis for that change is a settlement of an earlier year's appeal in which they were not named as parties. Appellants claim that R.C. 5747.55 precludes funds of a non-participating subdivision from being changed. Indeed, R.C. 5747.55 provides:

² The Lorain County Metropolitan Park District's allocation was reduced to zero.

“The action of a county budget commission under sections R.C. 5747.51 and 5747.62 of the Revised Code may be appealed to the board of tax appeals in the manner and with the effect provided in section 5705.37 of the Revised Code, in accordance with the following rules:

“(C) There shall also be attached to the notice of appeal a statement showing:

“(1) The name of the fund involved, the total amount in dollars allocated, and the exact amount in dollars allocated to each participating subdivision.

“(2) The amount in dollars which the complaining subdivision believes it should have received;

“(3) 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.

“(D) *Only the participating subdivisions named pursuant to division (C) of this section are to be considered as appellees before the board of tax appeals and no change shall, in any amount, be made in the amount allocated to participating subdivisions not appellees.*” (Emphasis added.)

We agree with the appellants in part.

While the appellants originally challenged the manner in which the 2004 alternative formula (sometimes referred to as the “new alternative formula” to distinguish it from the alternative formula that had previously been in place and had been challenged by the city of Lorain), they have withdrawn that claim. Appellants’ brief regarding Ohio Supreme Court’s instructions to the board on remand, at 6. Therefore, in accordance with the court’s instructions to this board, the only issue for

our consideration is whether the appellants are entitled to additional funds from Lorain County, the entity identified through the notice of appeal as the "overallocated" subdivision.

We first consider the appellants' claim that the change made to the new alternative formula can never affect those taxing subdivisions that either were not a part of the earlier appeal or did not agree to the change. To fully understand appellants' position, a review of how local government funds are apportioned is necessary. Each year the Tax Commissioner estimates the amount to be paid into the local government fund for distribution for the following year. R.C. 5747.51. The budget commission then apportions funds to taxing subdivisions yearly. R.C. 5747.51.

Under R.C. 5745.51, local government funds are apportioned to taxing subdivisions on the basis of need. The determination of need is made by each county budget commission after a consideration of statutorily defined resources and expenditures of each subdivision. However, R.C. 5747.53 provides for an alternative method of apportionment. Under the alternative method, a county budget commission may consider "any factor" it deems to be "appropriate and reliable" in apportioning funds.³ R.C. 5747.53(D). The alternative method must be approved by the board of county commissioners, the legislative authority of the city located wholly or partially in the county with the greatest population, and the majority of the boards of township

³ The statute provides for certain minimums and maximums that are not in issue in this appeal.

trustees and legislative authorities of municipal corporations located wholly or partially within the county. R.C. 5747.53(B).

In the present matter, the appellants have withdrawn their claim as to the manner in which the alternative formula for distribution-year 2004 was approved. Therefore, the board finds the alternative formula for the 2004-distribution year to be valid. While we acknowledge that the appellants were not a part of the majority of taxing subdivisions voting for the new alternative formula, a sufficient number of taxing subdivisions did vote for the new alternative formula so that affirmative votes of the appellants were not necessary for passage. The appellants claim, however, that because the new alternative formula was conceived as a settlement of an earlier distribution year, and because they were not parties to the earlier settlement, their allocations cannot be changed in later years. We do not agree.

As the budget commission acts yearly, it follows that appeals from an action of a budget commission relate to a specific year. *South Russell v. Geauga Cty. Budget Comm.* (1984), 12 Ohio St.3d 126. R.C. 5747.55(D), therefore, guarantees the funds of a non-participating subdivision only for that year in which it was not included in an appeal. The statute does not address the effect of settlements on distributions in subsequent years.

There is no requirement that an alternative formula be approved by all taxing subdivisions within a county. Therefore, it may always be the case that an individual taxing subdivision may not wish to have its allocation adjusted. Nevertheless, the legislature has concluded that a county, the most populous city in

that county, and a majority of other taxing subdivisions have the power to make allocation adjustments, relying upon any factor considered appropriate and reliable. The board concludes that one factor taken into consideration in this matter was the settlement of litigation.

Once an alternative method that has no time limits is approved, it remains in force for ensuing years until it is revised, amended, or repealed pursuant to statute. *Reynoldsburg v. Licking Cty. Budget Comm.*, 104 Ohio St.3d 453, 2004-Ohio-6773; *Lancaster v. Fairfield Cty. Budget Comm.* (1999), 86 Ohio St.3d 137. While the appellants may be unwilling participants, they are participants nonetheless. Were we to agree with the appellants' claim, it could have the effect of denying a change to an alternative formula, even if the votes are present for such a change. The General Assembly did not provide an alternative for the minority of subdivisions, other than the county or the most populous city, which may not agree with the majority. Therefore, this board concludes that the appellants must accept the allocations made under the new alternative formula for tax years 2005 and 2006.

However, for distribution year 2004, the alternative formula included what the parties characterized as a "carve out," a fund of money to reimburse Lorain County for funds it provided to settle the 2002 challenge by the city of Lorain relating to funds apportioned for distribution-year 2003. It is clear from the record that the alternative formula approved for 2004 includes this amount for only distribution year 2004. Attachment to Appellant's Ex. 53, approved September 24, 2003. It is also clear from the record that these funds are paid to Lorain County from all the taxing

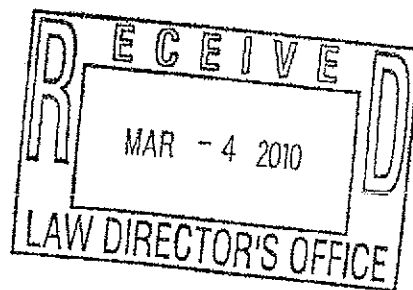
subdivisions except the city of Lorain, not only the subdivisions that were parties to the 2002 appeal.

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 the 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 settlement. The alternative formula attempted to reimburse Lorain County for settlement dollars from parties that were not a part of the 2003-allocation appeal. Such a reimbursement is contrary to law.

Therefore, the board finds that the 2004 alternative formula must be amended for the city of Elyria, the city of Avon Lake, the city of North Ridgeville, and Amherst Township to remove the reimbursement of their pro-rata share of the \$250,000 settlement of the 2002 appeal. As these funds were allocated to Lorain County, and the parties 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. The matter is remanded to the LCBC for reallocation of the 2004 distribution year only. The alternative formulas in place for the 2005 and 2006 years are found to be lawful, and are affirmed.

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.


Sally F. Van Meter, Board Secretary



[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Elyria v. Lorain Cty. Budget Comm.*, Slip Opinion No. 2008-Ohio-940.]

NOTICE

This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2008-OHIO-940

CITY OF ELYRIA ET AL., APPELLANTS, v. LORAIN COUNTY

BUDGET COMMISSION ET AL., APPELLEES.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Elyria v. Lorain Cty. Budget Comm.*, Slip Opinion No. 2008-Ohio-940.]

Local Government Fund — Local Government Revenue Assistance Fund — Jurisdiction — R.C. 5747.55 applies to an appeal taken from budget commission orders that allocate funds based on an alternative method of apportionment — An appeal to the Board of Tax Appeals from an apportionment by a budget commission must strictly comply with R.C. 5747.55(C)(3).

(Nos. 2006-2293, 2006-2389, and 2006-2390—Submitted November 6, 2007—
Decided March 12, 2008.)

APPEAL from the Board of Tax Appeals,
Nos. 2003-T-1533, 2004-T-1166, and 2005-T-1301.

SYLLABUS OF THE COURT

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1. R.C. 5747.55 applies to an appeal taken from budget commission orders that allocate funds based on an alternative method of apportionment.
2. An appeal to the Board of Tax Appeals from an apportionment by a budget commission must strictly comply with R.C. 5747.55(C)(3).

PFEIFER, J.

{¶ 1} In the three consolidated appeals before us, four political subdivisions in Lorain County – the city of Elyria, the city of North Ridgeville, the city of Avon Lake, and Amherst Township – challenge the alternative method of apportionment that was used by the county budget commission to apportion certain funds set aside by the state for local governments for distribution years 2004, 2005, and 2006. A fifth subdivision, Lorain County Metropolitan Park District, was an appellant at the Board of Tax Appeals (“BTA”), but did not appeal to this court.

{¶ 2} Ohio law provides for the creation of a “local government fund” (“LGF”) and during the relevant period at issue here, a “local government revenue assistance fund” (“LGRAF”).¹ R.C. 5747.03(A)(1) (creating LGF); former R.C. 5747.61(B) (creating LGRAF). By statute, a certain portion of various state taxes is directed into the LGF and LGRAF at the state level as a matter of course. See R.C. 5747.03(A)(1), 5747.03(A)(4) (personal income tax); R.C. 5733.12(A) (corporation franchise tax); R.C. 5739.21(A) (sales tax); R.C. 5741.03(A) (use tax); R.C. 5725.24 (dealers in intangibles tax); R.C. 5727.45 (public utility property and excise taxes); R.C. 5727.84 (kilowatt hour tax). Pursuant to statutory formulas, the Tax Commissioner is required to distribute the LFG and LGRAF to the county treasurers. The law mandated that the distributed amounts be credited, respectively, to the Undivided Local Government Fund (“ULGF”)

1. The 2007 budget bill repealed R.C. 5747.61, 5747.62, and 5747.63 as of June 30, 2007. 2007 Am.Sub.H.B. No. 119.

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and the Undivided Local Government Revenue Assistance Fund (“ULGRAF”) of each county. See R.C. 5747.50, R.C. 5747.51, and former 5747.61. 143 Ohio Laws, Part II, 2331, 2630-2632.

{¶ 3} At the county level, the statutes called for distributing the funds through a basic “statutory” method of apportionment that computes the “relative need” of the political subdivisions. R.C. 5747.51; former R.C. 5747.62. 147 Ohio Laws, Part II, 3906, 3945-3947. The statutes allowed the political subdivisions to adopt an “alternative method of apportionment” for LGF and LGRAF. R.C. 5747.53; former 5747.63. 149 Ohio Laws, Part IV, 7881, 7887-7890.

{¶ 4} The appeals we address today have their genesis in an earlier case that came before the BTA. In 2002, the city of Lorain (“Lorain City”) appealed the budget commission’s apportionment for the 2003 distribution year. In that appeal, Lorain City contended that the budget commission had allocated funds to an ineligible entity and that the alternative method of apportionment that the budget commission utilized had not been properly adopted under the statute. Although 23 political subdivisions, including the budget commission, were named as appellees in that appeal, none of the subdivisions that are appellants in this case were named.

{¶ 5} The parties to that case settled, and the terms of that settlement appear in the record via correspondence between Lorain County and Lorain City. Lorain City accepted the county’s proposal that (1) the county make an additional lump-sum payment of \$500,000 to Lorain City for the 2003 distribution year, (2) the county be responsible for half of this sum, with the subdivisions named in the appeal to be responsible for the other half, and (3) a new alternative method be adopted that would prospectively adjust apportionment percentages so that Lorain City would receive about \$640,000 more than it had under the previous alternative method. This last provision would be effectuated by apportioning to

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Lorain City an additional 3.396 percent of the funds – an increase that would be financed by across-the-board reductions in allocations to the other subdivisions, including appellants, who were not parties to the appeal.

{¶ 6} Elyria and the other appellants appealed the allocation under the new method of apportionment with respect to distribution year 2004 (No. 2006-2293), distribution year 2005 (No. 2006-2389), and distribution year 2006 (No. 2006-2390). (For convenience, we will use “Elyria” or “city of Elyria” as an abbreviated way of referring collectively to all of the appellants.) The notices of appeal to the BTA made two principal allegations of error. First, citing R.C. 5747.55(D), Elyria contended that it could not suffer a reduced allocation of LGF and LGRAF because it had not been made a party to Lorain City’s BTA appeal, which had produced the settlement. Second, Elyria argued that the new alternative method of apportionment had not been properly adopted pursuant to the timetable and procedures prescribed by the statutes.

{¶ 7} In each of the cases before us, Elyria had attached a table as Exhibit G to the notice of appeal. In Exhibit G, Elyria names the political subdivisions in Lorain County that had participated in the allocation of LGF and LGRAF. For each subdivision, the table identifies (1) what that subdivision received under the new alternative method of apportionment, (2) what that subdivision would have received under the prior method of apportionment (with modifications, see below), and (3) the amount of any overallocation or underallocation. On each Exhibit G, only one subdivision was identified as overallocated: Lorain County. The city of Lorain was listed, but the sums in the first two categories were presumed to be identical as a result of the settlement, so the tables showing under- and overallocation were blank.

{¶ 8} In case No. 2006-2293, the BTA held a hearing, and received stipulations and evidentiary exhibits. Instead of addressing the merits of the

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arguments advanced by Elyria, the BTA dismissed on the grounds that Elyria had failed to identify Lorain City as an overallocated subdivision.

{¶ 9} The BTA justified its dismissal by explaining that the second column in Exhibit G, which purports to represent a list of the funds “that should have been allocated under the alternative method used prior to settlement in Case No. 02-T-1865” overstates what the city of Lorain’s allocation would have been under the old formula and that in fact, the city benefits from the new formula. Therefore, the BTA stated, “the appellants do not, in fact, claim that all allocations should be reverted to the prior formula,” because under the former alternative method of apportionment, Lorain City would have received less money. The BTA concluded, therefore, that Elyria had made “a deliberate decision to exclude the city of Lorain as an over-allocated subdivision.” Confirming this conclusion was the claim for relief in the notice of appeal, in which Elyria initially asked the BTA to “allocate the 2004 LGF and 2004 RAF among the parties to the appeal in accordance with the alternative method used by the [budget commission] prior to the settlement of Case No. 02-T-1865.” But Elyria also asked that “any increased allocation to Lorain [city] as a result of such settlement [be] borne only by Lorain County from its allocated share and with no reduction suffered by any other participating subdivision.” *Id.*

{¶ 10} Because R.C. 5747.55(C)(3) requires an appellant to identify “each participating subdivision * * * that the complaining subdivision believes received more than its proper share of the allocation,” and because Elyria did not identify Lorain City as overallocated, the BTA found that Elyria had not complied with R.C. 5747.55(C)(3). Citing cases for the proposition that the requirements set forth in that statute constitute jurisdictional prerequisites to pursuing the appeal at the BTA, the BTA dismissed for lack of jurisdiction. Based on this analysis, the BTA also dismissed case Nos. 2006-2389 and 2006-2390, which pertain to

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subsequent distribution years. Elyria has appealed all three decisions to this court, and we now reverse.

{¶ 11} The BTA dismissed all three cases because it found that Elyria had failed to comply with R.C. 5747.55(C)(3). On appeal to this court, Elyria argues for the first time that R.C. 5747.55 and division (C)(3) in particular do not apply to appeals from budget commission decisions that allocate under an alternative method of apportionment. In the alternative, Elyria renews its contention that it complied with R.C. 5747.55(C)(3).

I

{¶ 12} R.C. 5747.55 states, “The action of the county budget commission under sections 5747.51 and 5747.62 of the Revised Code may be appealed * * *.” Because the statutory method of apportionment is detailed in R.C. 5747.51 and former 5747.62, and because separate sections address alternative methods of apportionment, the provisions of R.C. 5747.55 allegedly apply only to appeals from statutory-method allocations. Elyria asserts that R.C. 5747.55 applies only to appeals from allocations under the basic or “statutory” method. This argument appears to constitute a threshold issue: if R.C. 5747.55(C)(3) does not apply to these appeals, then the premise the BTA relied upon for dismissing the appeals evaporates. We conclude, however, that another issue arises as a threshold to the threshold: Elyria’s notice of appeal to this court does not assert that the BTA erred by applying R.C. 5747.55(C)(3). Ordinarily, we lack jurisdiction to decide an issue that has not been properly asserted in the notice of appeal to the court. See *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948, 865 N.E.2d 22, ¶ 32, and cases cited therein.

{¶ 13} *Dayton* does not preclude us from deciding whether the BTA properly regarded R.C. 5747.55(C)(3) as being applicable to this case. The applicability of R.C. 5747.55 affects the subject-matter jurisdiction of the BTA and, derivatively, of this court on appeal. See *Colonial Village Ltd. v.*

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Washington Cty. Bd. of Revision, 114 Ohio St.3d 493, 2007-Ohio-4641, 873 N.E.2d 298, ¶ 2. We have jurisdiction to review whether the BTA had jurisdiction of the merits of a case, and we can exercise that jurisdiction even when the alleged defect in the BTA's jurisdiction was not asserted in the notice of appeal to this court. See *id.* at ¶ 2, 10 (jurisdictional defect considered by the court even though it was asserted through a motion to remand rather than the notice of appeal); *H.R. Options, Inc. v. Zaino*, 100 Ohio St.3d 373, 2004-Ohio-1, 800 N.E.2d 740, ¶ 8 (court considered jurisdictional issue raised by appellant for the first time in his brief to the court). We conclude that it is both logical and practical to address whether R.C. 5747.55(C)(3) is applicable before we address whether Elyria complied with that provision. Determining the applicability of R.C. 5747.55 is crucial to our discussion of the scope of the BTA's jurisdiction in Part III of this opinion. Accordingly, we will exercise jurisdiction to determine whether R.C. 5747.55(C)(3) limits the BTA's jurisdiction to review the budget commission's decision in these appeals.

{¶ 14} We hold that R.C. 5747.55 applies to an appeal taken from budget commission orders that allocate funds based on an alternative method of apportionment. As a result, R.C. 5747.55(C)(3) imposes a jurisdictional requirement on the appeals before us.

{¶ 15} The plain language of the various sections of the Revised Code establishes that R.C. 5747.55 is applicable. By its very terms, R.C. 5747.55 applies when an appeal to the BTA concerns the "action of the county budget commission under sections 5747.51 and 5747.62 of the Revised Code." Elyria argues that, because R.C. 5747.51 and former 5747.62 set forth the basic or statutory method of apportionment at divisions (C) to (I) and (C) to (H) respectively, the legislature must have intended R.C. 5747.55 to apply only to appeals from an apportionment under the statutory method. We conclude

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otherwise because that argument fails to consider the function of division (B) of both R.C. 5747.51 and former 5747.62.

{¶ 16} In both R.C. 5747.51 and former 5747.62, division (B) sets forth the general mandate that the budget commission “determine the amount” of the LGF or LGRAF “needed by and to be apportioned to each subdivision.” In each section, division (B) expressly states that “[t]his determination shall be made pursuant to [the statutory method] unless the commission has provided for a formula pursuant to [R.C. 5747.53 or former 5747.63] of the Revised Code.” The “unless” clause refers to the provisions that authorize alternative methods of apportionment, and as a result the budget commission acts pursuant to division (B) of R.C. 5747.51 and former 5747.62 when it apportions funds under either the statutory or an alternative method. It follows that when the budget commission apportions in accordance with an alternative method, it is acting pursuant to division (B) of R.C. 5747.51 or former 5747.62. As a result, R.C. 5747.55 applies to appeals from such an apportionment, because it involves an action by the budget commission pursuant to R.C. 5747.51 and former 5747.62.

{¶ 17} Our holding in this regard is not contrary to earlier cases. In *Shawnee Twp. v. Allen Cty. Budget Comm.* (1991), 58 Ohio St.3d 14, 567 N.E.2d 1007, the county argued that R.C. 5747.55 did not apply because the township’s appeal to the BTA had challenged an alternative method of apportionment. We held that the appeal should be understood to be one that raised a right to a statutory apportionment, rather than constituting a challenge to apportionment under an alternative method. *Id.* at 16. Accordingly, we conclude that *Shawnee* did not reach and does not control the issue we decide here. See *Mogadore v. Summit Cty. Budget Comm.* (1987), 36 Ohio App.3d 42, 44, 520 N.E. 2d 1370. See also *Union Twp. v. Butler Cty. Budget Comm.* (1995), 101 Ohio App.3d 212, 216, 655 N.E.2d 260 (the court of appeals referred to our decision in *Shawnee*

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Twp. and apparently analyzed the case before it as involving an appeal from a statutory apportionment, but did not directly address the issue we consider here).

{¶ 18} Because R.C. 5747.55 applies, it follows that Elyria was obligated to comply with R.C. 5747.55(C)(3) in order to maintain its appeal at the BTA.

II

{¶ 19} We next address whether Elyria complied with R.C. 5747.55(C)(3) by identifying “each participating subdivision * * * that the complaining subdivision believes received more than its proper share of the allocation.”

{¶ 20} The parties dispute the standard to be applied in determining compliance with R.C. 5747.55(C)(3). Elyria contends that it may prosecute its appeal as long as it made a good-faith effort and substantially complied with R.C. 5747.55(C)(3). The county argues that strict compliance with R.C. 5747.55(C)(3) is required. We agree with the county, and we hold that an appeal to the BTA from the apportionment by a budget commission must strictly comply with R.C. 5747.55(C)(3). See *Cincinnati v. Hamilton Cty. Budget Comm.* (1979), 59 Ohio St.2d 43, 45, 13 O.O.3d 32, 391 N.E.2d 734 (good-faith reason for not naming overallocated subdivisions did not prevent dismissal of appeal); *Painesville v. Lake Cty. Budget Comm.* (1978), 56 Ohio St.2d 282, 284-285, 10 O.O.3d 411, 383 N.E.2d 896.

{¶ 21} The BTA dismissed the case because it found that Elyria should have named Lorain City as an overallocated subdivision. That finding was predicated on the BTA’s view that a litigant in Elyria’s position could assert only two types of claim before the BTA. Elyria could establish either “that the allocation should have been made under the old formula,” pursuant to which claim Elyria should have identified Lorain City as an overallocated subdivision, or that neither the current nor the former alternative formula applies, in which case, allocation would have to occur pursuant to the statutory method. Because Elyria requested “something different,” i.e. a variation on the former alternative

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method, not statutory apportionment, the BTA barred its appeal, stating, “[T]he appellants have decided to ‘pick and choose’ which entity should be responsible for any changes in the allocation, rather than seek to have the old formula applied as approved. As in the case of *Union Twp.* [101 Ohio App.3d 212, 655 N.E.2d 260], 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.” Elyria faults this rationale as consisting of the BTA’s “conclusions regarding the merits of Appellants’ claims and arguments” rather than constituting “grounds that are truly jurisdictional.” We agree, and we therefore reverse.

{¶ 22} The starting point is to ascertain what claim or claims Elyria’s notices of appeal to the BTA assert. In its notice of appeal for distribution year 2004, Elyria states, “[The budget commission] should have allocated the LGF and RAF for 2004 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 2004 LGF and 2004 RAF necessitated by the increased allocation to Lorain should have been borne entirely by allocation to appellee, Lorain County, Ohio * * *.”

{¶ 23} The notice of appeal references Exhibit G as showing the amounts underallocated, along with “the exact amount in dollars which has been overallocated to Lorain County.” The notices of appeal to the BTA for distribution years 2005 and 2006 set forth the same theory.

{¶ 24} Elyria’s theory of relief in paragraph 4(c) of the respective notices of appeal relies on R.C. 5747.55(D), which states that “no change shall, in any amount, be made in the amount allocated to participating subdivisions not

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appellees” in a BTA appeal. In effect, the notices of appeal to the BTA argue that the alternative method contemplated by the settlement is binding on the subdivisions of the county, and that settlement involves a contractual increase to Lorain City financed completely by the county. The assertion of this internally coherent theory, even if it ultimately fails on the merits, distinguishes this case from *Union Twp.*, 101 Ohio App.3d 212, 655 N.E.2d 260, upon which the BTA heavily relied in dismissing these appeals. In *Union Twp.*, officials of appellant Union Township believed that other townships would be overallocated, but made a conscious decision not to name those townships as being overallocated, preferring instead to recover only from the cities, even if that approach limited the amount of recovery. *Id.* at 217 (appellant told the BTA that it would content itself with “[w]hatever additional amount the Board of Tax Appeals chooses to re-allocate from the named Appellees”). There was no indication that Union Township had advanced any coherent theory of relief that justified naming only the subdivisions it named as being overallocated. In characterizing Elyria’s theory of relief as coherent, we are not prejudging the merits of that theory. We hold only that because Elyria’s notices of appeal to the BTA asserted a claim that justified naming the county as the only overallocated subdivision, the BTA had jurisdiction to determine the merits of that claim, and accordingly, the BTA committed legal error when it dismissed for want of jurisdiction.

{¶ 25} In *Hamilton Cty. Budget Comm.*, 59 Ohio St.2d 43, 13 O.O.3d 32, 391 N.E.2d 734, we addressed a different situation. The notice of appeal to the BTA in that case stated that the appellant “cannot state with certainty which, if any, of the participating subdivisions may have received more and which may have received less than its proper share or what the amount of its proper share should be.” *Id.* at 45. The BTA and the court agreed that such a notice did not invoke the BTA’s jurisdiction. This case is significantly different from *Cincinnati*. Elyria has named one overallocated subdivision, a designation that is

SUPREME COURT OF OHIO

arguably consistent with its theory as to the errors committed by the budget commission, whereas in *Cincinnati*, no subdivision was identified as overallocated.

{¶ 26} Finally, we address the possibility that the BTA has already considered and rejected the merits of Elyria's theory of relief. To be sure, the BTA's discussion broadly implies that such a theory is not cognizable on the merits, but we decline to view the cursory attention the BTA devoted to it as a rejection of the merits of that theory. When litigants present their contentions to the BTA, the law requires the BTA to apply its expertise and present its findings and the basis therefore. See *Gen. Motors Corp. v. Cuyahoga Cty. Bd. of Revision* (1990), 53 Ohio St.3d 233, 235, 559 N.E.2d 1328. Accordingly, we reverse the decision of the BTA to dismiss the appeals, and we remand for further proceedings.

III

{¶ 27} It remains for us to clarify the scope of the BTA's jurisdiction on remand.

{¶ 28} First, as we have discussed, the BTA has jurisdiction to determine the validity of Elyria's primary claim for relief on the merits. Accordingly, on remand, the BTA will have the authority to decide whether Elyria is entitled to the specific relief reflected by the figures in Exhibit G of the notices of appeal.

{¶ 29} Second, the BTA on remand will not have jurisdiction to entertain any theory of relief not consistent with Elyria's identification of Lorain County as the only overallocated subdivision. In *Union Twp.*, 101 Ohio App.3d at 218, 655 N.E.2d 260, the court of appeals explained that the "purpose of appeal is to permit a subdivision receiving less than its statutory [or alternative-method] share to seek to recover that share," and it does so from the fund consisting of "the over-allocations to the named appellees." By requiring an appellant to name the appellees and identify their potential liability, the statute furnishes notice to those

January Term, 2008

other subdivisions about what they stand to lose and thereby puts them on guard to defend. It follows that the BTA may not exercise jurisdiction to consider a claim that the earlier alternative method of apportionment should be completely reinstated. As the BTA correctly found, this theory cannot be squared with the notice of appeal because reinstating the earlier formula, with adjustment for the settlement, would mean that Lorain City has been overallocated, but the notice of appeal does not identify that city as being overallocated.

{¶ 30} Finally, the BTA will not have jurisdiction to apply the statutory method. We understand that the BTA, in the decision under review, has already found that the statutory method is not jurisdictionally before it, and the appeal to this court did not challenge that disposition. *Dayton-Montgomery Cty. Port Auth.*, 113 Ohio St.3d 281, 2007-Ohio-1948, 865 N.E.2d 22, ¶ 33.

{¶ 31} These jurisdictional limitations are particularly significant because Elyria asserted an alternative claim that the new apportionment method had not been properly and timely adopted in case Nos. 2006-2293 and 2006-2389. If the BTA finds that this contention is correct in one or more of the appeals before us, it would ordinarily have to either reinstate the former alternative method or determine the proper distribution through the statutory method. But in this case, the BTA will lack jurisdiction to pursue either of these alternatives. It would, upon making such a finding, have to dismiss the appeal.

{¶ 32} With these precepts in mind, we reverse the decisions of the BTA in the three appeals before us and remand each case for further proceedings in accordance with this opinion.

Decisions reversed
and causes remanded.

MOYER, C.J., and LUNDBERG STRATTON, O'CONNOR, O'DONNELI., and
CUPP, JJ., concur.

LANZINGER, J., concurs in judgment only.

SUPREME COURT OF OHIO

Terry S. Shilling, Elyria Law Director, and Michelle D. Nedwick, Assistant Law Director, for appellants city of Elyria and Amherst Township.

Geoffrey R. Smith, Avon Lake Law Director, for appellant city of Avon Lake.

Eric H. Zagrans, for appellant city of North Ridgeville.

Thompson Hine L.L.P, John T. Sunderland, and John B. Kopf, for appellees Lorain County and Lorain County Board of Commissioners.

John R. Varanese, for appellee city of Lorain.

Gerald A. Innes, Assistant Prosecuting Attorney, for appellee Lorain County Budget Commission.

FILE COPY

**BOARD OF TAX APPEALS
STATE OF OHIO**

CITY OF ELYRIA, OHIO

Thaddeus Pileski, Auditor
328 Broad Street
Elyria, Ohio 44035,

and

CITY OF NORTH RIDGEVILLE, OHIO

Chris Costin, Auditor
7307 Avon Belden Road
North Ridgeville, Ohio 44039,

and

CITY OF AVON LAKE, OHIO

Joseph Newlin, Finance Director
150 Avon Belden Road
Avon Lake, Ohio 44012

and

AMHERST TOWNSHIP, OHIO

John Koval, Clerk
7530 Oberlin Road
Elyria, Ohio 44035

and

**LORAIN COUNTY METROPOLITAN
PARK DISTRICT**

Denise Gfell, Treasurer
12882 Diagonal Road
LaGrange, Ohio 44050,

Appellants,

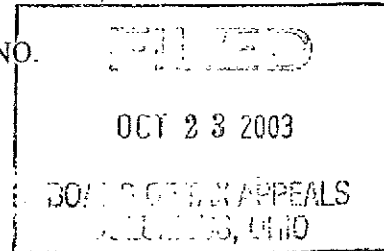
vs.

**LORAIN COUNTY BUDGET
COMMISSION**

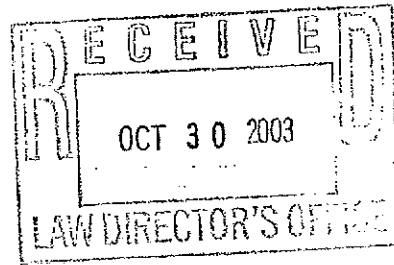
Mark R. Stewart, Member and Secretary
226 Middle Avenue
Elyria, Ohio 44035,

and

CASE NO.



(BUDGET COMM. - LGF/RAF)



NOTICE OF APPEAL

LORAIN COUNTY, OHIO

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

and

**BOARD OF COUNTY COMMISSIONERS
OF LORAIN COUNTY, OHIO**

226 Middle Avenue, Fourth Floor
Elyria, Ohio 44035,

and

CITY OF AMHERST

Diane L. Eswine, Auditor
206 S. Main Street
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, 6th Floor
Lorain, Ohio 44052-1647,

and

CITY OF OBERLIN

Kelly E. Clark, Auditor
85 S. Main Street
Oberlin, Ohio 44074,

and

CITY OF SHEFFIELD LAKE

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

and

CITY OF VERMILION

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

and

GRAFTON VILLAGE

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

and

KIPTON VILLAGE

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

and

LaGRANGE VILLAGE

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

and

ROCHESTER VILLAGE

Laura Brady, Clerk
52185 Griggs Road
Wellington, Ohio 44090

and

SHEFFIELD VILLAGE

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

and

SOUTH AMHERST VILLAGE

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

and

WELLINGTON VILLAGE

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

and

BRIGHTON TOWNSHIP

Marilyn McClellan, Clerk
19996 Baird Road
Wellington, Ohio 44090.

and

BROWNHELM TOWNSHIP

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

and

CAMDEN TOWNSHIP

Marilyn Ellingsworth, Clerk
51257 Betts Road
Wellington, Ohio 44090,

and

CARLISLE TOWNSHIP

Linda M. Lowery, Clerk
11969 LaGrange Road
LaGrange, Ohio 44050

and

COLUMBIA TOWNSHIP

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

and)

EATON TOWNSHIP)

Linda Spitzer, Clerk)
12043 Avon Belden Road)
Grafton, Ohio 44044)

and)

ELYRIA TOWNSHIP)

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

and)

GRAFTON TOWNSHIP)

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

and)

HENRIETTA TOWNSHIP)

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

and)

HUNTINGTON TOWNSHIP)

Margaret Harris, Clerk)
26309 State Rte. 58)
Wellington, Ohio 44090)

and)

LaGRANGE TOWNSHIP)

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

and)

NEW RUSSIA TOWNSHIP

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

and

PENFIELD TOWNSHIP

Eleanor Gndt, Clerk
42760 Peck Wadsworth Road
Wellington, Ohio 44090

and

PITTSFIELD TOWNSHIP

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

and

ROCHESTER TOWNSHIP

Laura Brady, Clerk
52185 Griggs Road
Wellington, Ohio 44090

and

SHEFFIELD TOWNSHIP

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

and

WELLINGTON TOWNSHIP

Bernie Nirode, Clerk
44627 State Rte. 18
Wellington, Ohio 44090,

Appellees.

1. Appellants, the City of Elyria ("Elyria"), the City of North Ridgeville ("North Ridgeville"), the City of Avon Lake ("Avon Lake"), Amherst Township ("Amherst Twp.") and the

Lorain County Metropolitan Park District ("MetroParks"), hereby appeal from the action taken by the Lorain County Budget Commission ("LCBC") on September 24, 2003, allocating the 2004 Undivided Local Government Funds ("LGF") and Undivided Local Government Revenue Assistance Funds ("RAF") pursuant to an unlawful alternative method of apportionment. This appeal is taken pursuant to Sections 5705.37 and 5747.55 of the Ohio Revised Code.

2. On or after September 25, 2003, Elyria, North Ridgeville, Avon Lake, Amherst Twp. and MetroParks each received notice of the above-referenced action by LCBC, an exact copy of which is attached hereto as Exhibit "A" and incorporated by reference herein.

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 councils of Elyria and North Ridgeville on October 6, 2003, by the municipal council of Avon Lake and the Amherst Twp. Board of Trustees on October 20, 2003, and by the MetroParks Board on October 15, 2003, certified copies of which are attached hereto as Exhibits "B", "C", "D", "E" and "F" respectively.

4. Appellants assert that LCBC made the following errors of law in its alternative formula. *See Springfield City Comm. v. Bethel Twp.*, BTA Case No. 78-F-610 (1982):

- (a) LCBC erred by allocating the 2004 LGF and RAF using an alternative formula that fails to include an allocation and distribution to a statutorily-eligible entity;
- (b) LCBC abused its discretion when it failed to include an allocation to MetroParks;
- (c) 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, Amherst Twp. and MetroParks 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, Amherst Twp. and MetroParks were not named parties, in violation of the provisions of Section 5747.55(D) of the Ohio Revised Code and Ohio law;

- (d) LCBC erred by allocating the 2004 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 Sections 5747.53(B) and 5747.63(B) of the Ohio Revised Code.

5. Appellants assert that LCBC should have allocated the LGF and RAF for 2004 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 2004 LGF and 2004 RAF necessitated by the increased allocation to Lorain should have been borne entirely by allocation to Appellee, Lorain County, Ohio ("Lorain County"), not by the allocations to Elyria, North Ridgeville, Avon Lake, Amherst Twp. and MetroParks who were not named parties to the prior tax appeal proceeding.

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, Amherst Twp.'s and MetroParks' allocations of the 2004 LGF and RAF, and has made unlawful and excessive allocations to Lorain County. Exhibit "G" attached hereto and incorporated by reference herein sets forth, by each fund involved (whether LGF or RAF), the total amount of dollars allocated and the exact amounts in dollars allocated to each subdivision from the 2004 LGF and 2004 RAF as erroneously determined by LCBC (Column 1), and sets forth the amount in dollars which Elyria, North Ridgeville, Avon Lake, Amherst Twp. and MetroParks claim they should have received from the 2004 LGF and 2004 RAF if LCBC had properly allocated such funds pursuant to law (Column 2). Exhibit "G" also sets forth

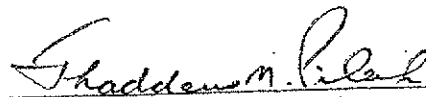
the exact amount in dollars which has been overallocated to Lorain County (Column 3), and the exact amounts in dollars which have been underallocated to each other participating subdivision (Column 4).

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

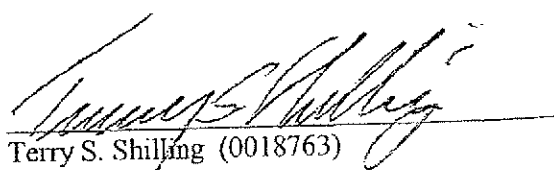
WHEREFORE, Appellants, the City of Elyria, the City of North Ridgeville, the City of Avon Lake, Amherst Township and Lorain County Metropolitan Park District, hereby pray that the Board of Tax Appeals:

- (a) find that the alternative method of apportionment used by LCBC to allocate the LGF and RAF for distribution in 2004 is invalid;
- (b) allocate the 2004 LGF and 2004 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 borne only by Lorain County from its allocated share and with no reduction suffered by any other participating subdivision; and
- (c) order Appellants to recover the costs of these proceedings from Appellees, the Lorain County Budget Commission and Lorain County, and to receive such other and further relief as the Board may deem just and proper.

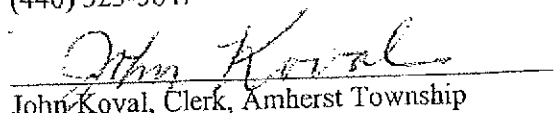
Respectfully submitted,



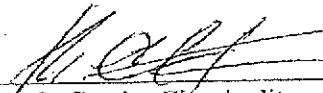
Thaddeus Pileski, City Auditor
City of Elyria
328 Broad Street
Elyria, Ohio 44035



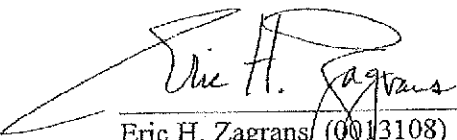
Terry S. Shilling (0018763)
Elyria City Law Director
328 Broad Street
Elyria, Ohio 44035
(440) 323-5647



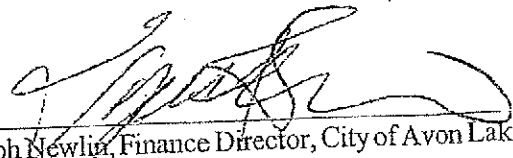
John Koval, Clerk, Amherst Township
7530 Oberlin Road
Elyria, Ohio 44035



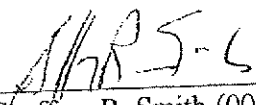
Chris S. Costin, City Auditor
City of North Ridgeville
7307 Avon Belden Road
North Ridgeville, Ohio 44039



Eric H. Zagrans (0013108)
Law Director of the City of North Ridgeville
7307 Avon Belden Road
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(440) 353-0848



Joseph Newlin, Finance Director, City of Avon Lake
150 Avon Belden Road
Avon Lake, Ohio 44012



Geoffrey R. Smith (0008772) Law Director, City
of Avon Lake
150 Avon Belden Road
Avon Lake, Ohio 44012
(440) 933-3231

Z:\My Documents\Appeal to Ohio Board of Tax Appeals.wpd

Denise Gfell

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

Susan Keating

Susan Keating (0075456) Attorney for Lorain
County Metropolitan Park District
% Baumgartner & O'Toole
5455 Detroit Road
Sheffield Village, Ohio 44054
(440) 930-4001

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 and Lorain County Budget Commission by Certified U.S. Mail, return receipt requested, this 23rd day of October, 2003.

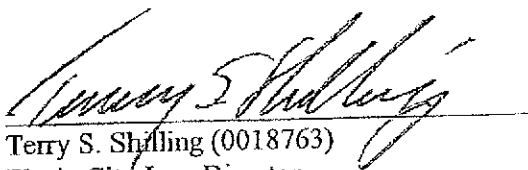

Terry S. Shilling (0018763)
Elyria City Law Director

EXHIBIT G

Attached and Incorporated by Reference Pursuant to Paragraph 6 of Notice of Appeal
Part I

Subdivision	(1) Share of LGF For 2004 by LCBC	(2) Share of LGF for 2004 That Should Have Been Allocated Under the Alternative Method Used Prior to Settlement in Case No. 02-T-1865	(3) Over Allocation of LGF for 2004	(4) Under Allocation of LGF for 2004
Lorain County	8,255,064.84	7,722,661.69	532,403.15	-
Amherst City	235,093.24	260,195.27	-	25,102.03
Avon City	221,877.94	245,279.62	-	23,401.68
Avon Lake City	421,647.58	467,357.11	-	45,709.53
Elyria City	1,585,190.21	1,755,075.09	-	169,884.88
Lorain City	3,349,724.05	3,349,724.05	-	-
North Ridgeville City	512,515.19	566,794.79	-	54,279.60
Oberlin City	404,159.66	447,469.57	-	43,309.91
Sheffield Lake City	229,429.54	253,566.09	-	24,136.55
Vermilion City	78,298.17	86,179.33	-	7,881.16
Grafton Village	72,237.02	79,550.15	-	7,313.13
Kipton Village	17,239.51	19,887.54	-	2,648.03
LaGrange Village	36,118.51	39,775.08	-	3,656.57
Rochester Village	13,016.57	14,915.66	-	1,899.09
Sheffield Village	77,105.81	86,179.33	-	9,073.52

South Amherst Village	71,293.07	79,550.15	-	8,257.08
Wellington Village	105,275.27	116,010.63	-	10,735.36
Amherst Township	75,764.41	84,522.03	-	8,757.62
Brighton Twp	19,028.05	21,544.84	-	2,516.79
Brownhelm Twp	30,107.04	33,145.90	-	3,038.86
Camden Twp	32,690.48	36,460.49	-	3,770.01
Carlisle Twp	103,486.73	114,353.34	-	10,866.61
Columbia Twp	100,555.52	111,038.75	-	10,483.23
Eaton Twp	91,016.66	101,094.98	-	10,078.32
Elyria Twp	49,284.13	54,690.73	-	5,406.60
Grafton Twp	41,931.25	46,404.26	-	4,473.01
Henrietta Twp	32,740.16	36,460.49	-	3,720.33
Huntington Twp	30,603.85	33,145.90	-	2,542.05
LaGrange Twp	49,234.45	54,690.73	-	5,456.28
Penfield Twp	23,797.48	26,516.72	-	2,719.24
Pittsfield Twp	36,019.15	39,775.08	-	3,755.93
Rochester Twp	17,984.73	19,887.54	-	1,902.81
New Russia Twp	46,501.96	51,376.14	-	4,874.18
Sheffield Twp	75,267.60	82,864.74	-	7,597.14
Wellington Twp	31,647.17	34,803.19	-	3,156.02
Lorain Co Metro Parks	NONE	-	-	-
TOTAL Part I	16,572,947.00	16,572,947.00	532,403.15	532,403.15
TOTAL Part II	2,374,939.00	2,374,939.00	51,868.64	51,868.64
TOTALS Part I & II	18,947,886.00	18,947,886.00	584,271.79	584,271.79

EXHIBIT G

Attached and Incorporated by Reference Pursuant to Paragraph 6 of Notice of Appeal
Part II

Subdivision	(1) Share of RAF For 2004 by LCBC	(2) Share of RAF for 2004 That Should Have Been Allo- cated Under the Alternative Method Used Prior to Settle- ment in Case No. 02-T-1865	(3) Over Allocation of RAF for 2004	(4) Under Allocation of RAF for 2004
Lorain County	1,147,143.02	1,095,274.38	51,868.64	-
Amherst City	35,384.63	37,049.03	-	1,664.40
Avon City	33,395.55	34,911.60	-	1,516.05
Avon Lake City	63,463.52	66,498.29	-	3,034.77
Elyria City	238,592.03	249,606.09	-	11,014.06
Lorain City	480,022.67	480,022.67	-	-
North Ridgeville City	77,140.29	80,747.93	-	3,607.64
Oberlin City	60,831.36	63,648.37	-	2,817.01
Sheffield Lake City	34,532.17	36,099.07	-	1,566.90
Vermilion City	11,784.91	12,349.68	-	564.77
Grafton Village	10,872.62	11,399.71	-	527.09
Kipton Village	2,594.77	2,612.43	-	17.66
LaGrange Village	5,436.31	5,699.85	-	263.54
Rochester Village	1,959.17	2,137.45	-	178.28
Sheffield Village	11,605.44	12,112.19	-	506.75

South Amherst Village	10,730.55	11,162.21	-	431.66
Wellington Village	15,845.32	16,624.57	-	779.25
Amherst Township	11,403.54	11,874.70	-	471.16
Brighton Twp	2,863.97	3,087.42	-	223.45
Brownhelm Twp	4,531.51	4,749.88	-	218.37
Camden Twp	4,920.35	5,224.87	-	304.52
Carlisle Twp	15,576.12	16,387.08	-	810.96
Columbia Twp	15,134.93	15,912.09	-	777.16
Eaton Twp	13,699.21	14,249.63	-	550.42
Elyria Twp	7,417.91	7,837.30	-	419.39
Grafton Twp	6,311.21	6,649.83	-	338.62
Henrietta Twp	4,927.83	5,224.87	-	297.04
Huntington Twp	4,606.28	4,749.88	-	143.60
LaGrange Twp	7,410.43	7,837.30	-	426.87
Penfield Twp	3,581.83	3,799.90	-	218.07
Pittsfield Twp	5,421.36	5,699.85	-	278.49
Rochester Twp	2,706.94	2,849.93	-	142.99
New Russia Twp	6,999.16	7,362.31	-	363.15
Sheffield Twp	11,328.77	11,874.70	-	545.93
Wellington Twp	4,763.32	4,987.37	-	224.05
Lorain Co Metro Parks	NONE	16,624.57	-	16,624.57
TOTAL Part II	2,374,939.00	2,374,939.00	51,868.64	51,868.64

BOARD OF TAX APPEALS
STATE OF OHIO

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

CASE NO.

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

and

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

Appellants

vs.

RECEIVED
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LORAIN COUNTY
AUDITOR

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

Diane L. Eswine, Auditor
206 S. Main Street
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, 6th 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

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

and

CITY OF VERMILION

Laurence Rush, 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
42 Court
Kipton, Ohio 44049

and

LAGRANGE VILLAGE

Rita K. Ruot, Clerk-Treasurer
355 South Center St.
P.O. Box 597
LaGrange, Ohio Ohio 44050

and

ROCHESTER VILLAGE

Patty Amspaugh, Clerk-Treasurer
316 N. State Street
S. Rochester, Ohio 44090

and

SHEFFIELD VILLAGE

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

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
Willard Memorial Square
Wellington, Ohio 44090

and

BRIGHTON TOWNSHIP

Marilyn McClellan, Clerk of Council
19996 Baird Road
Wellington, Ohio 44090

and

BROWNHELM TOWNSHIP

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

and

CAMDEN TOWNSHIP

Marilyn Ellingsworth, Clerk of Council
51257 Betts Road
Wellington, Ohio 44090

and

CARLISLE TOWNSHIP

Linda M. Lowery, Clerk
11969 LaGrange Road
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
41416 Griswold Road
Elyria, Ohio 44035

and

GRAFTON TOWNSHIP

Mary Rose Dangelo, Clerk of Council/Clerk
17109 Avon Belden Road
Grafton, Ohio 44044

and

HENRIETTA TOWNSHIP

Francis J. Knoble, Clerk of Council/Clerk
10413 Vermilion Road
Oberlin, Ohio 44074

and

HUNTINGTON TOWNSHIP

Margaret Harris, Clerk of Council/Clerk
26309 State Route 58
Wellington, Ohio 44090

and

LAGRANGE TOWNSHIP

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

and

NEW RUSSIA TOWNSHIP

Elaine R. King, Clerk of Council/Clerk
46268 Butternut Ridge Road
Oberlin, Ohio 44074

and

PENFIELD TOWNSHIP

Eleanor Gmandt, 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
 Angelo J. Marotta, Clerk of Council/Clerk
 5166 Clinton Avenue
 Lorain, Ohio 44055

and

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

Appellees

1. Appellants, the City of Elyria ("Elyria"), the City of North Ridgeville ("North Ridgeville"), the City of Avon Lake ("Avon Lake"), Amherst Township ("Amherst Twp.") and the Lorain County Metropolitan Park District ("MetroParks"), (Collectively Appellants) hereby appeal from the action taken by the Lorain County Budget Commission ("LCBC") on September 13, 2004, allocating the 2005 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 September 21, 2004, Appellants each received notice of the above-referenced action by LCBC, an exact copy of which is attached hereto as Exhibit "A" and incorporated by reference herein.

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 October 4, 2004, by the municipal council of North Ridgeville on October 18, 2004, by the municipal council of Avon Lake on October 11, 2004, by the Amherst Twp. Board of Trustees on October 12, 2004, and by the MetroParks Board on October 20, 2004, certified copies of which are attached hereto as Exhibits "B", "C", "D", "E" and "F" respectively.

4. Appellants hereby in the alternative assert that LCBC made the following errors of law in its action taken on September 13, 2004 (See Exhibit A). *See Springfield City Comm. v. Bethel Twp.*, BTA Case No. 78-F-610 (1982):

(a) LCBC erred by allocating the 2005 LGF and RAF using an alternative formula that fails to include an allocation and distribution to a statutorily-eligible entity;

(b) LCBC abused its discretion when it failed to include an allocation to MetroParks;

(c) 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, Amherst Twp. and MetroParks 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, Amherst Twp. and MetroParks were not named parties, in violation of the provisions of ORC Section 5747.55(D) and Ohio law;

(d) LCBC erred by allocating the 2005 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).

(e) LCBC erred by allocating the entire 2005 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 the provisions of ORC Section 5747.55(D).

(f) LCBC erred by not allocating to the Appellees only the pro rata portion of the 2005 LGF and RAF that was the subject of Case No. 02-T-1865 which erroneously and effectively reduced the 2005 allocation of the LGF and RAF to the Appellants in violation of the provisions of ORC Section 5747.55(D) and Ohio law.

(g) LCBC erred by not allocating to the Appellants pro rata (percentage) portion of the 2005 LGF and RAF that was not the subject of Case No. 02-T-1865 which erroneously and effectively reduced the 2005 allocation of the LGF and RAF to the Appellants in violation of the provisions of ORC Section 5747.55 (D) and Ohio law.

(h) LCBC erred by not timely making its apportionment of the 2005 LGF and RAF as required under ORC Sections 5705.27, 5747.51 and 5747.53 and Ohio law.

5. Appellants assert that LCBC should have allocated the LGF and RAF for 2005 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 2005 LGF and 2005 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 to 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, Amherst Twp.'s and MetroParks' allocations of the 2005 LGF and RAF, and has made unlawful and excessive allocations to Appellees listed in Exhibit "G". Exhibit "G" attached hereto and incorporated by reference herein sets forth, by each fund involved (whether LGF or RAF) the total amount of dollars allocated and the exact amounts in dollars allocated to each subdivision from the 2005 LGF and 2005 RAF as erroneously determined by LCBC (Column 1), and sets forth the amount in dollars which Elyria, North Ridgeville, Avon Lake, Amherst Twp. and MetroParks claim they should have received from the 2005 LGF and 2005-RAF if LCBC had properly allocated such funds pursuant to law (Column 2). Exhibit "G" also sets forth the exact amount in dollars which has been overallocated to Appellees, (Column 3) and the exact amounts in dollars which have been underallocated to the Appellants (Column 4).

7. Appellants assert that when the LCBC allocated the 2005 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 2005 LGF and RAF fund that is the same percentage of such funds for 2003 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 2005 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 Eighteen Million One Hundred Eighty Five Thousand One Hundred Forty Two Dollars (\$18,185,142.00). The 2003 RAF was Two Million Five Hundred Eighty Eight Thousand Three Hundred Thirty One Dollars (\$2,588,331.00). Of this, the percentage of the LGF fund that was originally allocated to the Appellants before the appeal in Case No. 02-T-1865 was 17.33 percent or Three Million One Hundred Fifty Two Thousand Two Hundred Fifty Five Dollars (\$3,152,255.00) and the percentage of the 2003 RAF was 17.77 percent or Four Hundred Sixty Thousand Sixty Three Dollars (\$460,063.00). It is the Appellants' position that those percentages to Appellants of the 2003 LGF and RAF must remain the same for the 2005 LGF and RAF and the Appellants by law must be allocated 17.33 percent of the 2005 LGF and 17.77 percent of the 2005 RAF. By implementing the settlement in Case No. 02-T-1865 and using the "invalid" alternative method from that settlement, the Appellants' allocation for 2005 of the LGF and RAF was effectively reduced as detailed in Exhibit H in violation of the provisions of ORC Section 5747.55(D) as said Appellants were not parties to Case No. 02-T-1865.

8. ORC Section 5705.27 provides inter alia that the LCBC shall complete its work on or before the first day of September annually unless for good cause the tax commissioner extends the time for completing the work. For the 2005 LGF and RAF allocation, the LCBC received an extension of time to the 1st day of October, 2004. The action taken by the LCBC on September 13, 2004 as stated in Exhibit A was not formally adopted by the LCBC until October 18, 2004 when at a meeting on that day the LCBC approved the minutes of the September 13, 2004

meeting. Under Ohio law said Commission's actions are only valid and final when the minutes of an action and meeting are approved. The approval of the minutes on October 18, 2004 of the September 13, 2004 action of the LCBC was not timely in that it was not finalized until after October 1, 2004 and, therefore, the apportionment made of the 2005 LGF and RAF as shown in Exhibit A is not in compliance with Ohio law. See State, ex rel. Hanley v. Roberts (1985), 17 Ohio St. 3d 1.

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

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

- (a) find that the alternative method of apportionment used by LCBC to allocate the 2005 LGF and RAF is invalid as it specifically relates and is applied to the Appellants;
- (b) allocate the 2005 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 2005 LGF and RAF so that the Appellants' percentage of the 2005 LGF and RAF as shown on Exhibit H not be reduced and that said Appellants not be affected or their allocations of the 2005 LGF and RAF not be reduced by implementation of the settlement in Case No. 02-T-1865.

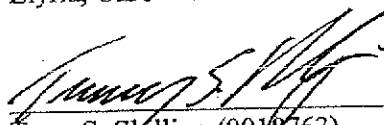
(d) find that the apportionment of the 2005 LGF and RAF made by the LCBC was not timely done in compliance with Ohio law and is thus invalid.

(e) issue an order for Appellants to recover the costs of these proceedings from Appellees, the Lorain County Budget Commission and Lorain County, and to receive such other and further relief as the Board may deem just and proper; and

Respectfully submitted,



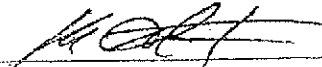
Thaddeus Pileski, City Auditor
City of Elyria
131 Court Street
Elyria, Ohio 44035



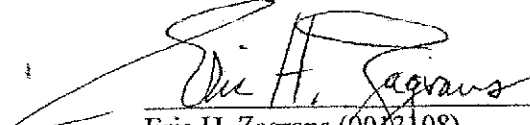
Terry S. Shilling (0018763)
Elyria City Law Director
131 Court Street
Elyria, Ohio 44035
(440) 326-1464

John Koval

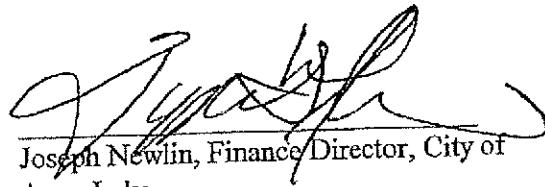
John Koval, Clerk, Amherst Township
7530 Oberlin Road
Elyria, Ohio 44035




 Chris S. Costin, City Auditor
 City of North Ridgeville
 7307 Avon Belden Road
 North Ridgeville, Ohio 44039



 Eric H. Zagrans (0073108)
Attorney for ~~Law Director of the City of North Ridgeville~~
 7307 Avon Belden Road
 North Ridgeville, Ohio 44039
 (440) 353-0848



Joseph Newlin, Finance Director, City of
Avon Lake
150 Avon Belden Road
Avon Lake, Ohio 44012



Geoffrey R. Smith (0008772) Law Director,
City of Avon Lake
150 Avon Belden Road
Avon Lake, Ohio 44012
(440) 933-3231

Denise Thompson (Gfell)

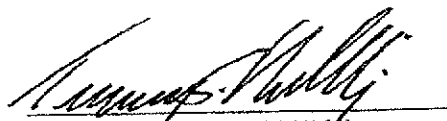
Denise Gfell, Treasurer for the Lorain
County Metropolitan Park District
12882 Diagonal Road
LaGrange, Ohio 44050

Paul D. Eklund *ES* *CONSENT*

Paul D. Eklund, (0001132) Attorney for
Lorain County Metropolitan Park District
% Davis & Young
1700 Midland Building
101 Prospect Avenue, West
Cleveland, Ohio 44115-1027
(216) 348-1700

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 20th day of October, 2004.


Terry S. Shilling (0018763)
Elyria City Law Director

WEHawdir01\LawDir\Uecrjanderson\Notice of Appeal re. BOARD OF TAX APPEALSSTATE OF OHIO\CITY OF ELYRIA.wpd

EXHIBIT G

Attached and Incorporated by Reference Pursuant to Paragraph 6 of Notice of Appeal
Part I

Subdivision	(1) Share of LGF for 2005 by LCBC	(2) Share of LGF for 2005 that Should Have Been Allocated Under the Alternative Method Used Prior to Settlement in Case No. 02-T-1865	(3) Over Allocation of LGF for 2005	(4) Under Allocation of LGF for 2005
Lorain County	8,005,064.84	7,857,020.71	148,044.13	-
Amherst City	246,923.24	246,923.24	-	-
Avon City	233,042.94	233,042.94	-	-
Avon Lake City	442,865.08	467,357.11	-	24,492.03
Elyria City	1,664,957.71	1,755,075.09	-	90,117.38
Lorain City	3,349,724.05	3,349,724.05	-	-
North Ridgeville City	538,305.19	566,794.79	-	28,489.60
Oberlin City	424,497.16	424,497.16	-	-
Sheffield Lake City	240,974.54	240,974.54	-	-
Vermilion City	82,238.17	82,238.17	-	-
Grafton Village	75,872.02	75,872.02	-	-
Kipton Village	18,107.01	18,107.01	-	-
LaGrange Village	37,936.01	37,936.01	-	-
Rochester Village	13,671.57	13,671.57	-	-
Sheffield Village	80,985.81	80,985.81	-	-

South Amherst Village	74,880.57	74,880.57	-	-
Wellington Village	110,572.77	110,572.77	-	-
Amherst Township	79,576.91	84,522.03	-	4,945.12
Brighton Twp	19,985.55	19,985.55	-	-
Brownhelm Twp	31,622.04	31,622.04	-	-
Camden Twp	34,335.48	34,335.48	-	-
Carlisle Twp	108,694.23	108,694.23	-	-
Columbia Twp	105,615.52	105,615.52	-	-
Eaton Twp	95,596.66	95,596.66	-	-
Elyria Twp	51,764.13	51,764.13	-	-
Grafton Twp	44,041.25	44,041.25	-	-
Henrietta Twp	34,387.66	34,387.66	-	-
Huntington Twp	32,143.85	32,143.85	-	-
LaGrange Twp	51,711.95	51,711.95	-	-
Penfield Twp	24,994.98	24,994.98	-	-
Pittsfield Twp	37,831.65	37,831.65	-	-
Rochester Twp	18,889.73	18,889.73	-	-
New Russia Twp	48,841.96	48,841.96	-	-
Sheffield Twp	79,055.10	79,055.10	-	-
Wellington Twp	33,239.67	33,239.67	-	-
Lorain Co Metro Parks	NONE	-	-	-
TOTAL Part I	16,572,947.00	16,572,947.00	148,044.13	148,044.13
TOTAL Part II	2,374,939.00	2,374,939.00	34,752.20	34,752.20
TOTALS Part I & II	18,947,886.00	18,947,886.00	182,796.33	182,796.33

EXHIBIT G

Attached and Incorporated by Reference Pursuant to Paragraph 6 of Notice of Appeal
Part II

Subdivision	(1) Share of RAF for 2005 by LCBC	(2) Share of RAF for 2005 That Should Have Been Allocated Under the Alternative Method Used Prior to Settlement in Case No. 02-T- 1865	(3) Over Allocation of RAF for 2005	(4) Under Allocation of RAF for 2005
Lorain County	1,147,143.02	1,112,390.82	34,752.20	-
Amherst City	35,384.63	35,384.63	-	-
Avon City	33,395.55	33,395.55	-	-
Avon Lake City	63,463.52	66,498.29	-	3,034.77
Elyria City	238,592.03	249,606.09	-	11,014.06
Lorain City	480,022.67	480,022.67	-	-
North Ridgeville City	77,140.29	80,747.93	-	3,607.64
Oberlin City	60,831.36	60,831.36	-	-
Sheffield Lake City	34,532.17	34,532.17	-	-
Vermilion City	11,784.91	11,784.91	-	-
Grafton Village	10,872.62	10,872.62	-	-
Kipton Village	2,594.77	2,594.77	-	-
LaGrange Village	5,436.31	5,436.31	-	-
Rochester Village	1,959.17	1,959.17	-	-
Sheffield Village	11,605.44	11,605.44	-	-

South Amherst Village	10,730.55	10,730.55	-	-
Wellington Village	15,845.32	15,845.32	-	-
Amherst Township	11,403.54	11,874.70	-	471.16
Brighton Twp	2,863.97	2,863.97	-	-
Brownhelm Twp	4,531.51	4,531.51	-	-
Camden Twp	4,920.35	4,920.35	-	-
Carlisle Twp	15,576.12	15,576.12	-	-
Columbia Twp	15,134.93	15,134.93	-	-
Eaton Twp	13,699.21	13,699.21	-	-
Elyria Twp	-7,417.91	-7,417.91	-	-
Grafton Twp	6,311.21	6,311.21	-	-
Henrietta Twp	4,927.83	4,927.83	-	-
Huntington Twp	4,606.28	4,606.28	-	-
LaGrange Twp	7,410.43	7,410.43	-	-
Penfield Twp	3,581.83	3,581.83	-	-
Pittsfield Twp	5,421.36	5,421.36	-	-
Rochester Twp	2,706.94	2,706.94	-	-
New Russia Twp	6,999.16	6,999.16	-	-
Sheffield Twp	11,328.77	11,328.77	-	-
Wellington Twp	4,763.32	4,763.32	-	-
Lorain Co Metro Parks	NONE	16,624.57	-	16,624.57
TOTAL Part II	2,374,939.00	2,374,939.00	34,752.20	34,752.20

Exhibit H

Attached and incorporated by reference pursuant to Paragraph 7 of Notice of Appeal Calculations for LGF and RAF are based on the same method and Column Headings are same for both LGF and RAF.

LGF

The total LGF for 2003 was \$18,185,142.00 (See Schedule H-1 attached) and the total LGF for 2005 is \$16,572,947.00.

Appellants	Share In Dollars of 2003 LGF Allocated to Appellants (See Schedule H-1 for LGF and Schedule II-2 for RAF)	Share In Percentages of 2003 LGF Allocated to Appellants (See Schedule H-1 for LGF and Schedule H-2 for RAF)	Share of Dollars in 2005 LGF Allocated to Appellants	Share of 2005 LGF that should have been allocated to Appellants based on same percentage for 2003	Change (Reduction) in Allocation of 2005 LGF to Appellants
Avon Lake	512,156.53	2.82%	442,865.08	467,330.40	[24,465.32]
Elyria	1,925,483.80	10.59%	1,664,957.71	1,754,974.80	[90,017.09]
North Ridgeville	622,573.62	3.42%	538,305.19	566,762.40	[28,457.21]
Amherst Twp	92,040.88	.51%	79,576.91	84,517.20	[4,940.29]
Metro Parks	NONE	-	-	-	-
Total	3,152,254.83	17.33% rounding	2,725,704.89	2,873,584.80	[147,879.91]

RAF

The total RAF for 2003 was \$2,588,331.00 (See Schedule H-2 attached) and the total RAF for 2005 is \$2,374,939.00.

Avon Lake	71,823.34	2.80%	63,463.52	66,498.29	[3,034.77]
Elyria	270,024.17	10.51%	238,592.03	249,606.08	[11,014.05]
North Ridgeville	87,307.90	3.40%	77,140.29	80,747.93	[3,607.64]
Amherst Twp	12,907.62	.50%	11,403.54	11,874.70	[471.16]
Metro Parks	18,000.00	.70%	NONE	16,624.57	[16,624.57]
Total	460,063.03	17.77 rounding	390,599.38	425,351.57	[34,752.19]

Schedule H-1

ITEMIZED REPORT ON DISTRIBUTION OF
ESTIMATED UNDIVIDED LOCAL GOVERNMENT FUND
FUND FOR 2003

Report required by RC 5747.62(f)

SUBDIVISION	AMOUNT	% GRAND TOTAL
COUNTY	\$ 9,092,571.00	50.00%
AMHERST CITY	\$ 285,540.08	1.57%
AVON CITY	\$ 260,526.93	1.48%
AVON LAKE CITY	\$ 512,156.63	2.82%
ELYRIA CITY	\$ 1,025,489.80	10.59%
LORAIN CITY	\$ 3,057,995.80	16.82%
NORTH RIDGEVILLE CITY	\$ 622,573.82	3.42%
OSHERLIN CITY	\$ 490,894.43	2.70%
SHEFFIELD LAKE CITY	\$ 278,858.82	1.53%
VERMILION CITY	\$ 95,092.00	0.52%
GRAFTON VILLAGE	\$ 87,749.41	0.48%
RIPTON VILLAGE	\$ 20,914.50	0.12%
LAGRANGE VILLAGE	\$ 43,876.10	0.24%
ROCHESTER VILLAGE	\$ 15,780.78	0.09%
SHEFFIELD VILLAGE	\$ 93,830.73	0.51%
BO. AMHERST VILLAGE	\$ 86,577.74	0.48%
WELLINGTON VILLAGE	\$ 127,879.29	0.70%
AMHERST TOWNSHIP	\$ 92,040.85	0.51%
BRIGHTON TOWNSHIP	\$ 23,116.05	0.13%
BROWNHelm TOWNSHIP	\$ 38,573.35	0.20%
CAMDEN TOWNSHIP	\$ 30,729.45	0.22%
CARLISLE TOWNSHIP	\$ 125,706.45	0.69%
COLUMBIA TOWNSHIP	\$ 122,132.90	0.67%
EATON TOWNSHIP	\$ 110,549.39	0.61%
ELYRIA TOWNSHIP	\$ 59,846.08	0.33%

GRAFTON TOWNSHIP	\$	80,923.31	0.28%
HENRIETTA TOWNSHIP	\$	38,790.12	0.22%
HUNTINGTON TOWNSHIP	\$	37,173.71	0.20%
LAGRANGE TOWNSHIP	\$	60,313.19	0.33%
PENFIELD TOWNSHIP	\$	28,929.61	0.16%
PITTSFIELD TOWNSHIP	\$	43,780.65	0.24%
ROCHESTER TOWNSHIP	\$	21,187.99	0.12%
NEW RUSSIA TOWNSHIP	\$	56,454.44	0.31%
SHEFFIELD TOWNSHIP	\$	91,397.02	0.50%
WELLINGTON TOWNSHIP	\$	38,428.53	0.21%
HUMAN SERVICES	\$	-	0.00%

TOTAL \$ 18,185,142.09 100.00%

TOTAL FOR ALL CITIES \$ 7,037,918.24 41.45%

TOTAL FOR ALL VILLAGES \$ 475,408.75 2.62%

TOTAL FOR ALL TOWNSHIPS \$ 1,576,242.81 8.93%

Schedule H-2

ITEMIZED REPORT ON DISTRIBUTION OF
ESTIMATED UNDIVIDED LOCAL GOVERNMENT REVENUE ASSISTANCE
FUND FOR 2003
Report required by RC 5747.51(J)

SUBDIVISION	AMOUNT	% GRAND TOTAL
COUNTY	\$ 1,275,116.50	49.65%
AMHERST CITY	\$ 40,043.29	1.56%
AVON CITY	\$ 37,797.67	1.47%
AVON LAKE CITY	\$ 71,823.34	2.80%
ELYRIA CITY	\$ 270,024.17	10.51%
LORAIN CITY	\$ 428,844.37	16.70%
NORTH RIDGEVILLE CITY	\$ 67,307.50	3.40%
OBERLIN CITY	\$ 88,841.60	2.68%
SHEFFIELD LAKE CITY	\$ 39,077.99	1.52%
VERMILION CITY	\$ 13,335.42	0.52%
GRAFTON VILLAGE	\$ 12,903.72	0.48%
KIPTON VILLAGE	\$ 2,833.00	0.11%
LAGRANGE VILLAGE	\$ 6,153.07	0.24%
ROCHESTER VILLAGE	\$ 2,213.05	0.09%
SHEFFIELD VILLAGE	\$ 13,130.50	0.51%
SO. AMHERST VILLAGE	\$ 12,141.41	0.47%
WELLINGTON VILLAGE	\$ 17,833.42	0.70%
AMHERST TOWNSHIP	\$ 12,007.52	0.50%
BRIGHTON TOWNSHIP	\$ 3,241.73	0.13%
BROWNHELM TOWNSHIP	\$ 5,129.64	0.20%
CAMDEN TOWNSHIP	\$ 6,671.54	0.22%
CARLISLE TOWNSHIP	\$ 17,626.70	0.69%
COLUMBIA TOWNSHIP	\$ 17,127.56	0.67%

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514-995-8588

REVENUE ACCOUNTING

PAGE 03

EATON TOWNSHIP	\$	15,503.12	0.00%
ELYRIA TOWNSHIP	\$	8,392.62	0.33%
GRAFTON TOWNSHIP	\$	7,141.34	0.28%
HENRIETTA TOWNSHIP	\$	6,680.05	0.22%
HUNTINGTON TOWNSHIP	\$	6,213.41	0.20%
LAGRANGE TOWNSHIP	\$	8,388.31	0.33%
PENFIELD TOWNSHIP	\$	4,067.00	0.16%
PITTSFIELD TOWNSHIP	\$	6,136.86	0.24%
ROCHESTER TOWNSHIP	\$	3,086.70	0.12%
NEW RUSSIA TOWNSHIP	\$	7,917.01	0.31%
SHEFFIELD TOWNSHIP	\$	12,817.36	0.50%
WELLINGTON TOWNSHIP	\$	6,368.11	0.21%
METRO PARKS	\$	18,000.00	0.70%

TOTAL \$ 2,588,231.00 100.00%

TOTAL FOR ALL CITIES \$ 1,057,965.75 41.16%

TOTAL FOR ALL VILLAGES \$ 96,810.17 2.60%

TOTAL FOR ALL TOWNSHIPS \$ 1,572,099.58 5.89%

FILED
SEP 22 2005
BOARD OF TAX APPEALS
COLUMBUS, OHIO

September 22, 2005

BOARD OF TAX APPEALS
STATE OF OHIO

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

CASE NO.

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

and

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

Appellants

vs.

FILED
BOARD OF TAX APPEALS
2005 SEP 23 PM 2:02

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, 6th 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

Laurence Rush, 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
Tamara L. Smith, Finance Director
609 Harris Road
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
19996 Baird Road
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
15374 Baird Road
Oberlin, Ohio 44074

and

CARLISLE TOWNSHIP
Barb VanMeter, Clerk
40835 Banks Road
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
41835 Earlene Court
Elyria, Ohio 44035

and

GRAFTON TOWNSHIP
Mary Rose Dangelo, Clerk of Council/Clerk
17109 Avon Belden Road
Grafton, Ohio 44044

and

HENRIETTA TOWNSHIP

Francis J. Knoble, Clerk of Council/Clerk

10413 Vermilion Road

Oberlin, Ohio 44074

and

HUNTINGTON TOWNSHIP

Margaret Harris, Clerk of Council/Clerk

26309 State Route 58

Wellington, Ohio 44090

and

LAGRANGE TOWNSHIP

Roberta M. Dove, Clerk of Council/Clerk

P. O. Box 565

LaGrange, Ohio 44050

and

NEW RUSSIA TOWNSHIP

Elaine R. King, Clerk of Council/Clerk

46268 Butternut Ridge Road

Oberlin, Ohio 44074

and

PENFIELD TOWNSHIP

Eleanor Gnant, 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

Appellees

1. Appellants, the City of Elyria ("Elyria"), the City of North Ridgeville ("North Ridgeville"), the City of Avon Lake ("Avon Lake"), Amherst Township ("Amherst Twp.") and the Lorain County Metropolitan Park District ("MetroParks"), (Collectively Appellants) hereby appeal from the action taken by the Lorain County Budget Commission ("LCBC") on August 19, 2005, allocating the 2006 Undivided Local Government Funds ("LGF") and Undivided Local Government Revenue Assistance Funds ("RAFF") unlawfully. This appeal is taken pursuant to ORC Sections 5705.37 and 5747.55.

2. On or after August 24, 2005, Appellants each received notice of the above-referenced action by LCBC, an exact copy of which is attached hereto as Exhibit "A" and incorporated by reference herein.

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 19, 2005, by the municipal council of North Ridgeville on September 19, 2005, by the municipal council of Avon Lake on September 12, 2005, by the Amherst Twp. Board of Trustees on September 13, 2005, and by the MetroParks Board on September 21, 2005, certified copies of which are attached hereto as Exhibits "B", "C", "D", "E" and "F" respectively.

4. Appellants hereby in the alternative assert that LCBC made the following errors of law in its action taken on August 19, 2005 (See Exhibits A and A-1). See *Springfield City Comm. v. Bethel Twp.*, BTA Case No. 78-F-610 (1982):

- (a) LCBC erred by allocating the 2006 LGF and RAF using an alternative formula that fails to include an allocation and distribution to a statutorily-eligible entity;
- (b) LCBC abused its discretion when it failed to include an allocation to MetroParks;
- (c) 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, Amherst Twp. and MetroParks 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, Amherst Twp. and MetroParks were not named parties, in violation of the provisions of ORC Section 5747.55(D) and Ohio law;
- (d) LCBC erred by allocating the 2006 LGF and RAF using an invalid alternative formula that was not timely and lawfully adopted and approved by LCBC and the

(j) LCBC erred by not including in the municipal population of Lorain County the inhabitants of those territories in Lorain County comprising part of the township that has been annexed to a municipal corporation but remains part of the original township - AKA "dual jurisdiction territories". See Ohio AG Opinion No. 2005-030.

(k) LCBC erred by not adjusting the allocation of the 2006 LGF and RAF as required under ORC Sections 5747.51 (H) and 5747.53 (E) on the basis that the municipal population of Lorain County is 81% or more of the total population of Lorain County.

5. Appellants assert that LCBC should have allocated the LGF and RAF for 2006 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 2006 LGF and 2006 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 to 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, Amherst Twp.'s and MetroParks' allocations of the 2006 LGF and RAF, and has made unlawful and excessive allocations to Appellees listed in Exhibit "G". Exhibit "G" attached hereto and incorporated herein by reference sets forth at Column 1, the amount allocated to each subdivision from the 2006 LGF (Part I) and 2006 RAF (Part II) as erroneously determined by

necessary political subdivisions as required by ORC Sections 5747.53(B) and 5747.63(B).

(e) LCBC erred by allocating the 2006 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).

(f) LCBC erred by allocating the entire 2006 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 the provisions of ORC Section 5747.55(D).

(g) LCBC erred by not allocating to the Appellees only the pro rata portion of the 2006 LGF and RAF that was the subject of Case No. 02-T-1865 which erroneously and effectively reduced the 2006 allocation of the LGF and RAF to the Appellants in violation of the provisions of ORC Section 5747.55(D) and Ohio law.

(h) LCBC erred by not allocating to the Appellants pro rata (percentage) portion of the 2006 LGF and RAF that was not the subject of Case No. 02-T-1865 which erroneously and effectively reduced the 2006 allocation of the LGF and RAF to the Appellants in violation of the provisions of ORC Section 5747.55 (D) and Ohio law.

(i) LCBC erred by finding that the municipal population of Lorain County does not equal 81% or more of the total population of Lorain County.

LCBC. Exhibit G sets forth, at Column 2, the amount in dollars which the Appellants claim they should have received from the 2006 LGF and 2006 RAF if LCBC had properly allocated such funds pursuant to law. Exhibit "G" 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 2006 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 2006 LGF and RAF fund that is the same percentage of such funds for 2003 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 2006 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 Eighteen Million One Hundred Eighty Five Thousand One Hundred Forty Two Dollars (\$18,185,142.00). The 2003 RAF was Two Million Five Hundred Eighty Eight Thousand Three Hundred Thirty One Dollars (\$2,588,331.00). Of this, the percentage of the LGF fund that was originally allocated to the Appellants before the appeal in Case No. 02-T-1865 was 17.33 percent or Three Million One Hundred Fifty Two Thousand Two Hundred Fifty Five Dollars (\$3,152,255.00) and the percentage of the 2003 RAF was 17.77 percent or Four Hundred Sixty Thousand Sixty Three Dollars (\$460,063.00). It is the Appellants' position that those percentages to Appellants of the 2003 LGF and RAF must remain the same for the 2006 LGF and RAF and the Appellants by law must be allocated 17.33 percent of the 2006 LGF and 17.77 percent of the 2006 RAF. By

implementing the settlement in Case No. 02-T-1865 and using the "invalid" alternative method from that settlement, the Appellants' allocation for 2006 of the LGF and RAF was effectively reduced as detailed in Exhibit H in violation of the provisions of ORC Section 5747.55(D) as said Appellants were not parties to Case No. 02-T-1865.

8. 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 the Appellants' allocations of the 2006 LGF and RAF by not finding that the municipal population of Lorain County equals 81% or more of the total population of Lorain County and has made unlawful and excessive allocations to Appellee Lorain County. Exhibit I attached hereto and incorporated herein by reference sets forth, at Column 1, the amount allocated to each Appellant from the 2006 LGF (Part I) and 2006 RAF (Part II) as erroneously determined by LCBC. Exhibit I at Column 2 sets forth the amount in dollars which the Appellants claim they should have received from the 2006 LGF and 2006 RAF if LCBC had properly allocated such funds pursuant to law - ORC Sections 5747.51 (H) and 5747.53 (E). Exhibit I at Column 3 sets forth the amount in dollars overallocated to Appellee Lorain County and at Column 4 the amount in dollars underallocated to each Appellant and the total underallocated to all other subdivisions (Appellees). Exhibit I Part III is a summary of the underallocation to Appellants of the 2006 LGF and 2006 RAF.

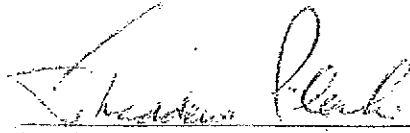
9. Copies of the tax budgets of Elyria, North Ridgeville, Amherst Township, Avon Lake and MetroParks are attached hereto as Exhibits "K", "L", "M" and "N", respectively, and incorporated by reference herein.

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

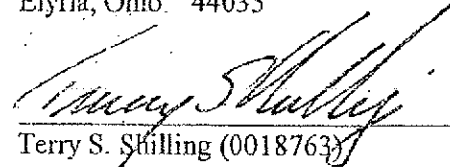
(a) find that the alternative method of apportionment used by LCBC to allocate the 2006

- LGF and RAF is invalid as it specifically relates and is applied to the Appellants;
- (b) allocate the 2006 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 2006 LGF and RAF so that the Appellants' percentage of the 2006 LGF and RAF as shown on Exhibit H not be reduced and that said Appellants not be affected or their allocations of the 2006 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 2006 LGF and RAF was not properly adopted.
 - f) Find that pursuant to ORC Section 5747.51 (H) the municipal population of Lorain County is 81% or more of the total population of Lorain County and reallocate the 2006 LGF and RAF allocation of each appellant as required under ORC Sections 5747.51 (H) and 5747.53 (E).
 - (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.

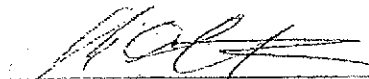
Respectfully submitted,



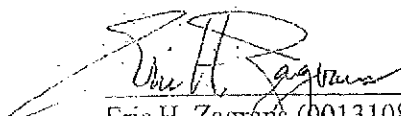
Thaddeus Pileski, City Auditor
City of Elyria
131 Court Street
Elyria, Ohio 44035



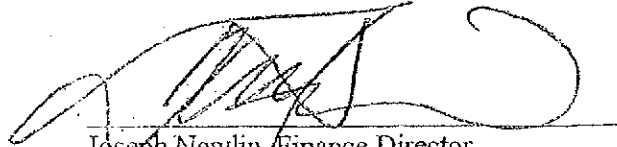
Terry S. Skilling (0018763)
Elyria City Law Director
131 Court Street
Elyria, Ohio 44035
(440) 326-1464



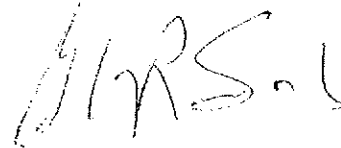
Chris S. Costin, City Auditor
City of North Ridgeville
7307 Avon Belden Road
North Ridgeville, Ohio 44039



Eric H. Zagars (0013108)
Attorney for the City of North Ridgeville
7307 Avon Belden Road
North Ridgeville, Ohio 44039
(440) 353-0848



Joseph Newlin, Finance Director
City of Avon Lake
150 Avon Belden Road
Avon Lake, Ohio 44012



Geoffrey R. Smith (0008772), Law Director
City of Avon Lake
150 Avon Belden Road
Avon Lake, Ohio 44012
(440) 933-3231

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

Denise Thompson
Denise (Gfell) Thompson, Treasurer for the
Lorain County Metropolitan Park District
12882 Diagonal Road
LaGrange, Ohio 44050

Paul D. Eklund / ds
Paul D. Eklund (0001132) Attorney for
Lorain County Metropolitan Park District
c/o Davis & Young
1700 Midland Building
101 Prospect Ave., West
Cleveland, Ohio 44115-1027
(216) 348-1700

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 22nd day of September, 2005.



Terry S. Shilling (0018763)
Elyria City Law Director

A:\Notice of Appeal re. BOARD OF TAX APPEALS for 2006.wp6

EXHIBIT G

Attached and Incorporated by Reference Pursuant to Paragraph 6 of Notice of Appeal
Part I

Subdivision	(1) Share of LGF for 2006 by LCBC	(2) Share of LGF for 2006 that Should Have Been Allocated Under the Alternative Method Used Prior to Settlement in Case No. 02-T-1865	(3) Over Allocation of LGF for 2006	(4) Under Allocation of LGF for 2006
Lorain County	8,009,110.15	7,860,991.23	148,118.92	-
Amherst City	247,047.99	247,047.99	-	-
Avon City	233,160.71	233,160.71	-	-
Avon Lake City	443,088.88	467,593.28	-	24,504.40
Elyria City	1,665,799.08	1,755,961.99	-	90,162.91
Lorain City	3,351,416.80	3,351,416.80	-	-
North Ridgeville City	538,577.22	567,081.21	-	28,503.99
Oberlin City	424,711.68	424,711.68	-	-
Sheffield Lake City	241,096.32	241,096.32	-	-
Vermilion City	82,279.73	82,279.73	-	-
Grafton Village	75,910.36	75,910.36	-	-
Kipton Village	18,116.16	18,116.16	-	-
LaGrange Village	37,955.18	37,955.18	-	-
Rochester Village	13,678.48	13,678.48	-	-
Sheffield Village	81,026.74	81,026.74	-	-
South Amherst Village	74,918.41	74,918.41	-	-

Wellington Village	110,628.65	110,628.65	-	-
Amherst Township	79,617.12	84,564.74	-	4,947.62
Brighton Twp.	19,995.65	19,995.65	-	-
Brownhelm Twp.	31,638.02	31,638.02	-	-
Camden Twp.	34,352.83	34,352.83	-	-
Carlisle Twp.	108,749.16	108,749.16	-	-
Columbia Twp.	105,668.89	105,668.89	-	-
Eaton Twp.	95,644.97	95,644.97	-	-
Elyria Twp.	51,790.29	51,790.29	-	-
Grafton Twp.	44,063.51	44,063.51	-	-
Henrietta Twp.	34,405.04	34,405.04	-	-
Huntington Twp	32,160.10	32,160.10	-	-
LaGrange Twp.	51,738.08	51,738.08	-	-
Penfield Twp.	25,007.61	25,007.61	-	-
Pittsfield Twp.	37,850.76	37,850.76	-	-
Rochester Twp.	18,899.28	18,899.28	-	-
New Russia Twp.	48,866.64	48,866.64	-	-
Sheffield Twp.	79,095.05	79,095.05	-	-
Wellington Twp	33,256.46	33,256.46	-	-
Lorain Co Metro Parks	NONE	-	-	-
TOTAL Part I	16,581,322.00	16,581,322.00	148,118.92	148,118.92
TOTAL Part II	2,374,939.00	2,374,939.00	34,752.19	34,752.19
TOTALS Part I & II	18,956,261.00	18,956,261.00	182,871.11	182,871.11

A:\EXHIBIT G Part I re. Local Govt. Fund Allocation.wpd

EXHIBIT G

Attached and Incorporated by Reference Pursuant to Paragraph 6 of Notice of Appeal
Part II

Subdivision	(1) Share of RAF for 2006 by LCBC	(2) Share of RAF for 2006 that Should Have Been Allocated Under the Alternative Method Used Prior to Settlement in Case No. 02-T-1865	(3) Over Allocation of RAF for 2006	(4) Under Allocation of RAF for 2006
Lorain County	1,147,143.02	1,112,390.82	34,752.19	-
Amherst City	35,384.63	35,384.63	-	-
Avon City	33,395.55	33,395.55	-	-
Avon Lake City	63,463.52	66,498.29	-	3,034.77
Elyria City	238,592.03	249,606.09	-	11,014.05
Lorain City	480,022.67	480,022.67	-	-
North Ridgeville City	77,140.29	80,747.93	-	3,607.64
Oberlin City	60,831.36	60,831.36	-	-
Sheffield Lake City	34,532.17	34,532.17	-	-
Vermilion City	11,784.91	11,784.91	-	-
Grafton Village	10,872.62	10,872.62	-	-
Kipton Village	2,594.77	2,594.77	-	-
LaGrange Village	5,436.31	5,436.31	-	-
Rochester Village	1,959.17	1,959.17	-	-
Sheffield Village	11,605.44	11,605.44	-	-
South Amherst Village	10,730.55	10,730.55	-	-

Wellington Village	15,845.32	15,845.32	-	-
Amherst Township	11,403.54	11,874.70	-	471.16
Brighton Twp.	2,863.97	2,863.97	-	-
Brownhelm Twp.	4,531.51	4,531.51	-	-
Camden Twp.	4,920.35	4,920.35	-	-
Carlisle Twp.	15,576.12	15,576.12	-	-
Columbia Twp.	15,134.93	15,134.93	-	-
Eaton Twp.	13,699.21	13,699.21	-	-
Elyria Twp.	7,417.91	7,417.91	-	-
Grafton Twp.	6,311.21	6,311.21	-	-
Henrietta Twp.	4,927.83	4,927.83	-	-
Huntington Twp	4,606.28	4,606.28	-	-
LaGrange Twp.	7,410.43	7,410.43	-	-
Penfield Twp.	3,581.83	3,581.83	-	-
Pittsfield Twp.	5,421.36	5,421.36	-	-
Rochester Twp.	2,706.94	2,706.94	-	-
New Russia Twp.	6,999.16	6,999.16	-	-
Sheffield Twp.	11,328.77	11,328.77	-	-
Wellington Twp	4,763.32	4,763.32	-	-
Lorain Co Metro Parks	NONE	16,624.57	-	16,624.57
TOTAL Part II	2,374,939.00	2,374,939.00	34,752.19	34,752.19

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Exhibit H

Attached and incorporated by reference pursuant to Paragraph 7 of Notice of Appeal Calculations for LGF and RAF are based on the same method and Column Headings are same for both LGF and RAF.

LGF

The total LGF for 2003 was \$18,185,142.00 (See Schedule H-1 attached) and the total LGF for 2006 is \$16,581,322.00.

Appellants	Share In Dollars of 2003 LGF Allocated to Appellants (See Schedule H-1 for LGF and Schedule H-2 for RAF)	Share In Percentages of 2003 LGF Allocated to Appellants (See Schedule H-1 for LGF and Schedule H-2 for RAF)	Share of Dollars in 2006 LGF Allocated to Appellants	Share of 2006 LGF that should have been allocated to Appellants based on same percentage for 2003	Change (Reduction) in Allocation of 2006 LGF to Appellants
Avon Lake	512,156.53	2.82%	443,088.88	467,593.28	[24,504.40]
Elyria	1,925,483.80	10.59%	1,665,799.08	1,755,961.99	[90,162.91]
North Ridgeville	622,573.62	3.42%	538,577.22	567,081.21	[28,503.99]
Amherst Twp	92,040.88	.51%	79,617.12	84,564.74	[4,947.62]
Metro Parks	NONE	-	-	-	-
Total	3,152,254.83	17.33% rounding	2,727,082.30	2,875,201.22	[148,118.92]

RAF

The total RAF for 2003 was \$2,588,331.00 (See Schedule H-2 attached) and the total RAF for 2006 is \$2,374,939.00.

Avon Lake	71,823.34	2.80%	63,463.52	66,498.29	[3,034.77]
Elyria	270,024.17	10.51%	238,592.03	249,606.08	[11,014.05]
North Ridgeville	87,307.90	3.40%	77,140.29	80,747.93	[3,607.64]
Amherst Twp	12,907.62	.50%	11,403.54	11,874.70	[471.16]
Metro Parks	18,000.00	.70%	NONE	16,624.57	[16,624.57]
Total	460,063.03	17.77 rounding	390,599.38	425,351.57	[34,752.19]

Schedule H-1

ITEMIZED REPORT ON DISTRIBUTION OF
ESTIMATED UNDIVIDED LOCAL GOVERNMENT FUND
FUND FOR 2003
Report required by RC 5747.62(f)

SUBDIVISION	AMOUNT	% GRAND TOTAL
COUNTY	\$ 9,092,571.00	50.00%
AMHERST CITY	\$ 285,540.08	1.57%
AVON CITY	\$ 260,626.93	1.48%
AVON LAKE CITY	\$ 512,166.63	2.82%
ELYRIA CITY	\$ 1,026,483.80	10.59%
LORAIN CITY	\$ 3,057,985.80	16.82%
NORTH RIDGEVILLE CITY	\$ 322,573.82	3.42%
OSHERLIN CITY	\$ 490,894.43	2.70%
SHEFFIELD LAKE CITY	\$ 378,656.82	1.53%
VERMILION CITY	\$ 95,092.00	0.62%
GRAFTON VILLAGE	\$ 87,749.41	0.48%
KIPTON VILLAGE	\$ 20,914.50	0.12%
LAGRANGE VILLAGE	\$ 43,876.19	0.24%
ROCHESTER VILLAGE	\$ 15,786.76	0.09%
SHEFFIELD VILLAGE	\$ 93,829.73	0.51%
SO. AMHERST VILLAGE	\$ 85,577.74	0.48%
WELLINGTON VILLAGE	\$ 127,879.29	0.70%
AMHERST TOWNSHIP	\$ 92,040.63	0.51%
BRIGHTON TOWNSHIP	\$ 23,116.06	0.13%
BROWNSHELM TOWNSHIP	\$ 36,573.36	0.20%
CAMDEN TOWNSHIP	\$ 38,729.45	0.22%
CARLISLE TOWNSHIP	\$ 125,706.45	0.68%
COLUMBIA TOWNSHIP	\$ 122,132.90	0.67%
EATON TOWNSHIP	\$ 110,649.39	0.51%
ELYRIA TOWNSHIP	\$ 69,846.93	0.33%

CRAFTON TOWNSHIP	\$	60,323.21	0.28%
HENRIETTA TOWNSHIP	\$	39,750.12	0.22%
HUNTINGTON TOWNSHIP	\$	57,175.71	0.20%
LAGRANGE TOWNSHIP	\$	59,845.19	0.33%
PENFIELD TOWNSHIP	\$	28,929.51	0.16%
PITTSFIELD TOWNSHIP	\$	43,780.65	0.24%
ROCHESTER TOWNSHIP	\$	21,837.94	0.12%
NEW RUSSIA TOWNSHIP	\$	55,454.44	0.31%
SHEFFIELD TOWNSHIP	\$	61,387.82	0.30%
WELLINGTON TOWNSHIP	\$	38,428.53	0.21%
HUMAN SERVICES	\$		0.00%

TOTAL \$ 18,155,142.60 100.00%

TOTAL FOR ALL CITIES \$ 7,537,919.54 41.46%

TOTAL FOR ALL VILLAGES \$ 476,408.78 2.62%

TOTAL FOR ALL TOWNSHIPS \$ 1,078,242.81 5.93%

Schedule H-2

INTERIMIZED REPORT ON DISTRIBUTION OF
 ESTIMATED UNDIVIDED LOCAL GOVERNMENT REVENUE ASSISTANCE
 FUND FOR 2003
 Report required by RC 5747.51(J)

SUBDIVISION	AMOUNT	% GRAND TOTAL
COUNTY	\$ 1,275,116.60	49.65%
AMHERST CITY	\$ 40,043.29	1.56%
AVON CITY	\$ 37,797.67	1.47%
AVON LAKE CITY	\$ 71,823.34	2.80%
ELYRIA CITY	\$ 270,024.17	10.51%
LORAIN CITY	\$ 428,244.37	16.70%
NORTH RIDGEVILLE CITY	\$ 87,307.90	3.40%
OBERLIN CITY	\$ 83,041.60	2.68%
SHEFFIELD LAKE CITY	\$ 39,077.99	1.52%
VERMILION CITY	\$ 13,335.42	0.52%
GRAFTON VILLAGE	\$ 12,505.72	0.48%
KIPTON VILLAGE	\$ 2,833.00	0.11%
LAGRANGE VILLAGE	\$ 6,153.07	0.24%
ROCHESTER VILLAGE	\$ 2,213.06	0.09%
SHEFFIELD VILLAGE	\$ 13,130.50	0.51%
SO. AMHERST VILLAGE	\$ 12,141.41	0.47%
WELLINGTON VILLAGE	\$ 17,933.42	0.70%
AMHERST TOWNSHIP	\$ 12,907.52	0.50%
BRIGHTON TOWNSHIP	\$ 3,241.73	0.13%
BROWNHelm TOWNSHIP	\$ 5,129.64	0.20%
CAMDEN TOWNSHIP	\$ 5,571.54	0.22%
CARLISLE TOWNSHIP	\$ 17,526.70	0.69%
COLUMBIA TOWNSHIP	\$ 17,127.56	0.67%

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REVENUE ACCUMULATION

PAGE 07

EATON TOWNSHIP	\$	15,503.12	0.60%
ELYRIA TOWNSHIP	\$	8,382.62	0.33%
GRAFTON TOWNSHIP	\$	7,141.54	0.28%
HENRIETTA TOWNSHIP	\$	5,880.05	0.22%
HUNTINGTON TOWNSHIP	\$	5,213.41	0.20%
LAGRANGE TOWNSHIP	\$	8,388.37	0.33%
PENFIELD TOWNSHIP	\$	4,067.00	0.16%
PITTSFIELD TOWNSHIP	\$	6,136.98	0.24%
ROCHESTER TOWNSHIP	\$	3,065.70	0.12%
NEW RUSSIA TOWNSHIP	\$	7,917.01	0.31%
SHEFFIELD TOWNSHIP	\$	12,847.36	0.50%
WELLINGTON TOWNSHIP	\$	5,389.11	0.21%
METRO PARKS	\$	15,000.00	0.70%
TOTAL	\$	2,588,231.00	100.00%
TOTAL FOR ALL CITIES	\$	1,057,065.76	41.16%
TOTAL FOR ALL VILLAGES	\$	65,810.17	2.55%
TOTAL FOR ALL TOWNSHIPS	\$	157,309.68	5.89%

EXHIBIT I - Part I (LGF)

Subdivision	(1) Share of LGF for 2006 by LCBC	(2) Share of LGF for 2006 that Should Have Been Allocated Under the Alternative Method had the LCBC Applied ORC Sections 5747.51 (H) and 5747.53 (E)	(3) Over Allocation of LGF for 2006 by Not Applying ORC Sections 5747.51 (H) and 5747.53 (E)	(4) Under Allocation of LGF for 2006 for Not Applying ORC Sections 5747.51 (H) and 5747.53 (E)
Lorain County	8,009,110.15	4,974,396.60	3,034,713.55	-
Avon Lake City	443,088.88	653,469.90	-	210,381.02
Elyria City	1,665,799.08	2,457,186.11	-	791,387.03
North Ridgeville City	538,577.22	793,913.70	-	255,336.48
Amherst Township	79,617.12	117,229.95	-	37,612.83
All Other Subdivisions-Appellees	5,845,129.55	7,585,125.74	-	1,739,996.19
TOTAL Part I	16,581,322.00	16,581,322.00	3,034,713.55	3,034,713.55
TOTAL Part II	2,374,939.00	2,374,939.00	434,661.32	434,661.32
TOTALS Part I & II	18,956,261.00	18,956,261.00	3,469,374.87	3,469,374.87

A:\EXHIBIT I Part I LGF re. Local Govt. Fund Allocation.wpd

EXHIBIT I - Part II (RAF)

Subdivision	(1) Share of RAF for 2006 by LCBC	(2) Share of RAF for 2006 that Should Have Been Allocated Under the Alternative Method had the LCBC Applied ORC Sections 5747.51 (H) and 5747.53 (E)	(3) Over Allocation of RAF for 2006 by Not Applying ORC Sections 5747.51 (H) and 5747.53 (E)	(4) Under Allocation of RAF for 2006 for Not Applying ORC Sections 5747.51 (H) and 5747.53 (E)
Lorain County	1,147,143.02	712,481.70	434,661.32	-
Avon Lake City	63,463.52	92,266.38	-	28,802.86
Elyria City	238,592.03	347,121.08	-	108,529.05
North Ridgeville City	77,140.29	112,215.87	-	35,075.58
Amherst Township	11,403.54	16,458.33	-	5,054.79
Lorain County Metro Parks	NONE	23,108.16	-	23,108.16
All Other Subdivisions-Appellees	837,196.60	1,071,287.48	-	234,090.88
TOTAL Part II	2,374,939.00	2,374,939.00	434,661.32	434,661.32

A:\EXHIBIT I Part II RAF re. Local Govt. Fund Allocation.wpd

Exhibit I - Part III - Summary of Unallocations to Appellants of 2006 LGF and RAF

LGF

The total LGF for 2003 was \$18,185,142.00 (See Schedule H-1) and the total LGF for 2006 is \$16,581,322.00 less 30% - County's Share (4,974,396.60) = \$11,606,925.40 for distribution to all other subdivisions..

Appellants	Share In Dollars of 2003 LGF Allocated to Appellants (See Schedule H-1 for LGF and Schedule H-2 for RAF)	Share of Dollars in 2006 LGF Allocated to Appellants by LCBC	Share In Percentages of 2006 LGF Allocated to Appellants Adjusted for Application of ORC Sections 5747.51 (H) and 5747.53 (E)	Share of 2006 LGF that should have been allocated to Appellants based on application of ORC Sections 5747.51 (H) and 5747.53 (E)	Change (Reduction) in Allocation of 2006 LGF to Appellants
Avon Lake	512,156.53	443,088.88	5.63	653,469.90	[210,381.02]
Elyria	1,925,483.80	1,665,799.08	21.17	2,457,186.11	[791,387.03]
North Ridgeville	622,573.62	538,577.22	6.84	793,913.70	[255,336.48]
Amherst Twp	92,040.88	79,617.12	1.01	117,229.95	[37,612.83]
Metro Parks	NONE	-	-	-	-
Total	3,152,254.83	2,727,082.30	34.65 (rounding)	4,021,799.66	1,294,717.36

RAF

The total RAF for 2003 was \$2,568,331.00 (See Schedule H-2) and the total RAF for 2006 is \$2,374,939.00 less 30% - County's Share (\$712,481.20) = \$1,662,457.30 for distribution to all other subdivisions.

Avon Lake	71,823.34	63,463.52	5.55	92,266.38	[28,802.86]
Elyria	270,024.17	238,592.03	20.88	347,121.08	[108,529.05]
North Ridgeville	87,307.90	77,140.29	6.75	112,215.87	[35,075.58]
Amherst Twp	12,907.62	11,403.54	.099	16,458.38	[5,054.79]
Metro Parks	18,000.00	NONE	1.39	23,108.16	[23,108.16]
Total	460,063.03	390,599.38	35.56 rounding	591,169.82	[200,570.44]

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Entered **NOV 17 2006**

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

The Board of Tax Appeals considers this matter pursuant to a notice of appeal filed by appellants, city of Elyria, city of Avon Lake, city of North Ridgeville, Amherst Township, and Lorain County Metropolitan Park District. The appeal was brought under the relevant provisions of R.C. 5705.37, 5747.53, 5747.55, and 5747.63 from the actions of the Lorain County Budget Commission. The appeal concerns the apportionment and distribution of the 2004 Undivided Local Government Fund ("ULGF") and the 2004 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.

Before reviewing the merits of this appeal, we must address a jurisdictional issue raised by appellee, city of Lorain, in its merit brief.¹ The city of Lorain asks us to dismiss this appeal because the appellants failed to comply with R.C. 5747.55(C)(3), which requires an entity appealing from the allocation made by the

¹ We note that jurisdictional issues cannot be waived and can therefore be raised at any time during the proceedings. *Jenkins v. Keller* (1966), 6 Ohio St.2d 122; *In re Claim of King* (1980), 62 Ohio St.2d 87; and *Baltimore & Ohio Ry. Co. v. Hollenberger* (1907), 76 Ohio St. 177. Nevertheless, the "failure of a litigant to object to subject-matter jurisdiction at the first opportunity is undesirable and procedurally awkward." *Gates Mills Investment Co. v. Parks* (1971), 25 Ohio St.2d 16, at 19. Here, despite the considerable amount of litigation involved in this appeal, the city of Lorain did not raise the issue of subject-matter jurisdiction until the filing of its post-hearing merit brief. As the court eloquently stated in *Painesville v. Lake Cty. Budget Comm.* (1978), 56 Ohio St.2d 282, at 284, "It may have been more graceful for the commission to file its motion to dismiss before the partial distribution was ordered, but the commission is not barred by its lack of procedural grace from raising the issue of lack of subject-matter jurisdiction." Similarly, we shall proceed to consider the jurisdictional question raised by the city of Lorain notwithstanding the procedural awkwardness through which it has been introduced.

budget commission to name those subdivisions the appellant believes to be over allocated and to state the amount of the alleged over-allocation.

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 that the old formula had not been properly adopted. See *City of Lorain v. Lorain Cty. Budget Comm.*, BTA No. 2002-T-1865.² 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 and made the 2004 allocations according to it. 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 had not been properly adopted and assert that allocation should be made according to the old formula.

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

² The record in BTA No. 2002-T-1865 has been made a part of the record in this appeal. See *City of Elyria v. Lorain Cty. Budget Comm.* (Interim Order, Dec. 30, 2004), BTA No. 2003-T-1533, unreported. See, also, the stipulation of facts submitted by the parties on January 18, 2006.

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.

In its review of the notice of appeal, the city of Lorain argues that the appellants have failed to comply with R.C. 5747.55(C)(3) in that the appellants have intentionally omitted naming the over-allocated subdivisions. The city of Lorain represents that, while the appellants claim that the old formula should be applied, the notice of appeal shifts all over-allocations to the county, rather than among other subdivisions, as would be the case if the old formula is applied. See Notice of Appeal at Ex. G. The appellants respond that they listed the amount of over-allocations as they believed them to be at the time of the filing of the notice of appeal, which, represent the appellants, is all that is required by R.C. 5747.55(C)(3). We must, however, concur with the city of Lorain that the appellants failed to list the exact amounts of the alleged over-allocation and, in so doing, failed to identify the claimed over-allocated subdivisions.

Generally, “[t]he right to appeal an allocation of a local government fund to the Board of Tax Appeals is created by statute. (R.C. 5747.55.) Therefore, if appellant has failed to comply with the appropriate statutory requirements, the board lacks subject-matter jurisdiction to hear the appeal.” *Painesville*, supra, at 284. Ohio tribunals have clearly established that “*** [w]here a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred.” *American Restaurant and Lunch Co. v. Glander* (1946), 147 Ohio St. 147, 150. See, also, *Queen City Valves, Inc. v. Peck* (1954), 161 Ohio St. 579, and *Olympic Steel, Inc. v. Cuyahoga Cty. Bd. of Revision*, 110 Ohio St.3d 1242, 2006-Ohio-4091, reconsideration denied, 2006-Ohio-5351.

Each section of R.C. 5747.55 “is written to be mandatory upon the appellant in the fulfillment of all the requirements in order to provide the appellate jurisdiction for review by the BTA. *** [Any] failure to comply with the statutory requirements *** impairs the BTA’s subject-matter jurisdiction.” *Union Twp. v. Butler Cty. Budget Comm.* (1995), 101 Ohio App.3d 212, at 216, discretionary appeal denied (1995), 72 Ohio St.3d 1551.

Relative to the issue raised by the city of Lorain, that the appellants failed to list the exact amount of over-allocation for each subdivision, we note that the same provisions of R.C. 5747.55(C)(3) have been previously addressed. In *Cincinnati v. Hamilton Cty. Budget Comm.* (1979), 59 Ohio St.2d 43, the court considered a situation in which the city of Cincinnati named every other subdivision in the county as an appellee in its appeal from the actions of the budget commission. Although each

subdivision was named, Cincinnati failed to identify which subdivisions it believed received more and which subdivisions it believed received less than their proper share. On appeal to this board, we dismissed, finding that Cincinnati failed to comply with R.C. 5747.55(C)(3). The Ohio Supreme Court agreed. Noting that “R.C. 5747.55 does not provide for an allegation of an excuse for noncompliance in lieu of compliance with its mandatory jurisdictional requirements,” the court concluded that, “[w]hile this places a considerable burden upon the city of Cincinnati, such a restriction upon appellant’s right to appeal from an allocation of the funds by the county budget commission is within the General Assembly’s intent in enacting R.C. 5747.55.” *Id.* at 45.

Subsequently, in *Union Twp*, *supra*, the Tenth District Court of Appeals considered a situation in which the appellant subdivision knew that other townships had received over-allocations but chose not to name them in its appeal. The court found the appeal to be jurisdictionally defective:

“Assuming, *arguendo*, that no alternate formula was properly adopted in the county for the year 1993 distribution of local government funds, the purpose of appeal is to permit a subdivision receiving less than its statutory share to seek to recover that share. The fund developed to accomplish that goal is the over-allocations to the named appellees. The ultimate goal is to reallocate in accordance with the statutory formula in the county where the appellees to an appeal are based. By not including those entities who the complaining party believed to be overallocated, but solely only setting forth those whom they wished to include, the complaining party is creating its own formula, not vindicating the statutory formula. Union Township has named, in its statement under R.C. 5747.55(C)(3), only those subdivisions against whom it chose to seek recovery, not those subdivisions it believed

to be over-allocated. By not complying with the statute conferring the right of appeal, Union Township has not properly invoked the subject-matter jurisdiction of the BTA ***." Id. at 218.

Turning to the matter before us, we find that the notice of appeal establishes that the appellants claim the 2004 allocations should be made according to the old formula. Appellants confirmed this position when they appeared at this board's hearing, stating, "[W]e are asking the Board to grant relief from the adoption and imposition of the new alternative formula, invalidate the new alternative formula, *and revert the county and all of its subdivisions, including the five Appellant parties, back to the prior alternative formula that was in effect.*" (Emphasis added.) H.R. at 152.

Exhibit G of the notice of appeal sets forth the name of the appellee subdivisions and the amount of claimed over-allocation. Column No. 1 of Exhibit G sets forth the 2004 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 BTA No. 2002-T-1865 for additional exhibits 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 over-allocated subdivision. Notice of Appeal at Ex. G.

Despite the appellants' claim that they properly listed the alleged over-allocation, 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]locate the 2004 LGF and 2004 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 Lorain County from its allocated share and with no reduction suffered by any other participating subdivision.” Notice of Appeal at 9.

R.C. 5747.55 establishes a means by which a subdivision that is receiving less than its proper allocation may seek to recover its share of the local government funds. *Union Twp.*, supra. Under the facts of this case, there could be three possible outcomes. First, that we would find the new formula to be properly adopted and affirm the commission's allocation. Second, that we would find that the allocation should have been made under the old formula. Finally, we could determine that neither alternative formula applies and order allocation pursuant to the statutory method.

The appellants, however, seek something different. They ask that we invalidate the new formula and allocate pursuant to the old formula, yet they also allege that the city of Lorain should retain the increase in allocation it received under

the new formula. Appellants shift the burden for this increase from several subdivisions to the county. In short, the appellants have decided to “pick and choose” which entity should be responsible for any changes in the allocation, rather than seek to have the old formula applied as approved. As in the case of *Union Twp.*, supra, 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. We must emphasize that any collateral agreement existing among the subdivisions is extraneous to the budget commission’s allocation under one of the alternate formulas.

Upon review, we agree with the city of Lorain 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. The appellants’ failure to comply with the mandatory requirements of the statute deprives us of subject-matter jurisdiction. *Union Twp.* and *Cincinnati*, supra.

While this decision may appear technical, we remind the parties of the Supreme Court’s decision in *Cincinnati*, supra, in which the court, recognizing the “considerable burden” placed upon an appealing subdivision, found that “[i]n enacting R.C. 5747.55, the General Assembly established high jurisdictional hurdles ****” upon those challenging a budget commission’s allocation of the ULGF and ULGRAF. *Id.* at

46.

We believe that the General Assembly took seriously the need for an appellant to identify the over-allocated subdivisions, given R.C. 5747.55(C)(3)'s requirement that an appellant list the "exact amount in dollars" of the alleged over-allocation. (Emphasis added.) This requirement places a subdivision on notice that its share of the funds may be in jeopardy. It gives that subdivision the ability to pursue a defense against any reallocation that this board may order. The failure to name a subdivision as being overallocated may lead that subdivision to conclude, erroneously, that its share of the funds is not at risk, and therefore that it need not participate in this board's proceedings. What is more, the failure to name a subdivision believed to be overallocated may result in that subdivision spending the share it has already received. Any subsequent reallocation made by this board could result in a fiscal crisis for such a subdivision, as the over-allocation must be immediately repaid. See *East Liverpool v. Budget Comm.*, 99 Ohio St.3d 137, 2003-Ohio-2760.

Upon review of the matter before us, 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. 2003-T-1533.

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

§ 5705.37. Appeal to board of tax appeals.

The taxing authority of any subdivision that is dissatisfied with any action of the county budget commission may, through its fiscal officer, appeal to the board of tax appeals within thirty days after the receipt by the subdivision of the official certificate or notice of the commission's action. In like manner, but through its clerk, the board of trustees of any public library, nonprofit corporation, or library association maintaining a free public library that has adopted and certified rules under section 5705.28 of the Revised Code, or any park district may appeal to the board of tax appeals. An appeal under this section shall be taken by the filing of a notice of appeal, either in person or by certified mail, express mail, or authorized delivery service as provided in section 5703.056 [5703.05.6] of the Revised Code, with the board and with the commission. If notice of appeal is filed by certified mail, express mail, or authorized delivery service, date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. Upon receipt of the notice of appeal, the commission, by certified mail, shall notify all persons who were parties to the proceeding before the commission of the filing of the notice of appeal and shall file proof of notice with the board of tax appeals. The secretary of the commission shall forthwith certify to the board a transcript of the full and accurate record of all proceedings before the commission, together with all evidence presented in the proceedings or considered by the commission, pertaining to the action from which the appeal is taken. The secretary of the commission also shall certify to the board any additional information that the board may request.

The board of tax appeals, in a de novo proceeding, shall forthwith consider the matter presented to the commission, and may modify any action of the commission with reference to the budget, the estimate of revenues and balances, the allocation of the library and local government support fund, or the fixing of tax rates. The finding of the board of tax appeals shall be substituted for the findings of the commission, and shall be certified to the tax commissioner, the county auditor, and the taxing authority of the subdivision affected, or to the board of public library trustees affected, as the action of the commission under sections 5705.01 to 5705.47 of the Revised Code.

This section does not give the board of tax appeals any authority to place any tax levy authorized by law within the ten-mill limitation outside of that limitation, or to reduce any levy below any minimum fixed by law.

HISTORY: GC § 5625-28; 112 v 391, § 28; 115 v PdlI, 412; 120 v 30; Bureau of Code Revision, 10-1-53; 125 v 235 (Eff 10-2-53); 131 v 1318 (Eff 9-15-65); 136 v H 920 (Eff 10-11-76); 140 v H 260 (Eff 9-27-83); 141 v H 146 (Eff 9-11-85); 142 v H 934 (Eff 3-17-89); 148 v H 612. Eff 9-29-2000.

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§ 5747.51. Allocation to county undivided local government funds.

(A) Within ten days after the fifteenth day of July of each year, the tax commissioner shall make and certify to the county auditor of each county an estimate of the amount of the local government fund to be allocated to the undivided local government fund of each county for the ensuing calendar year and the estimated amount to be received by the undivided local government fund of each county from the taxes levied pursuant to section 5707.03 of the Revised Code for the ensuing calendar year.

(B) At each annual regular session of the county budget commission convened pursuant to section 5705.27 of the Revised Code, each auditor shall present to the commission the certificate of the commissioner, the annual tax budget and estimates, and the records showing the action of the commission in its last preceding regular session. The estimates shown on the certificate of the commissioner of the amount to be allocated from the local government fund and the amount to be received from taxes levied pursuant to section 5707.03 of the Revised Code shall be combined into one total comprising the estimate of the undivided local government fund of the county. The commission, after extending to the representatives of each subdivision an opportunity to be heard, under oath administered by any member of the commission, and considering all the facts and information presented to it by the auditor, shall determine the amount of the undivided local government fund needed by and to be apportioned to each subdivision for current operating expenses, as shown in the tax budget of the subdivision. This determination shall be made pursuant to divisions (C) to (I) of this section, unless the commission has provided for a formula pursuant to section 5747.53 of the Revised Code.

Nothing in this section prevents the budget commission, for the purpose of apportioning the undivided local government fund, from inquiring into the claimed needs of any subdivision as stated in its tax budget, or from adjusting claimed needs to reflect actual needs. For the purposes of this section, "current operating expenses" means the lawful expenditures of a subdivision, except those for permanent improvements and except payments for interest, sinking fund, and retirement of bonds, notes, and certificates of indebtedness of the subdivision.

(C) The commission shall determine the combined total of the estimated expenditures, including transfers, from the general fund and any special funds other than special funds established for road and bridge; street construction, maintenance, and repair; state highway improvement; and gas, water, sewer, and electric public utilities operated by a subdivision, as shown in the subdivision's tax budget for the ensuing calendar year.

(D) From the combined total of expenditures calculated pursuant to division (C) of this section, the commission shall deduct the following expenditures, if included in these funds in the tax budget:

- (1) Expenditures for permanent improvements as defined in division (E) of section 5705.01 of the Revised Code;
- (2) In the case of counties and townships, transfers to the road and bridge fund, and in the case of municipalities, transfers to the street construction, maintenance, and repair fund and the state highway improvement fund;
- (3) Expenditures for the payment of debt charges;
- (4) Expenditures for the payment of judgments.

(E) In addition to the deductions made pursuant to division (D) of this section, revenues accruing to the general fund and any special fund considered under division (C) of this section from the following sources shall be deducted from the combined total of expenditures calculated pursuant to division (C) of this section:

- (1) Taxes levied within the ten-mill limitation, as defined in section 5705.02 of the Revised Code;
- (2) The budget commission allocation of estimated county library and local government support fund revenues to be distributed pursuant to section 5747.48 of the Revised Code;
- (3) Estimated unencumbered balances as shown on the tax budget as of the thirty-first day of December of the current year in the general fund, but not any estimated balance in any special fund considered in division (C) of this section;
- (4) Revenue, including transfers, shown in the general fund and any special funds other than special funds established for road and bridge; street construction, maintenance, and repair; state highway improvement; and gas, water, sewer, and electric public utilities, from all other sources except those that a subdivision receives from an additional tax or service charge voted by its electorate or receives from a special assessment or revenue bond collection. For the purposes of this division, where the charter of a municipal corporation prohibits the levy of an income tax, an income tax levied by the legislative authority of such municipal corporation pursuant to an amendment of the charter of that municipal corporation to authorize such a levy represents an additional tax voted by the electorate of that municipal corporation. For the purposes of this division, any measure adopted by a board of county commissioners pursuant to section 322.02, 324.02, 4504.02, or 5739.021 [5739.02.1] of the Revised Code, including those measures upheld by the electorate in a referendum conducted pursuant to section 322.021 [322.02.1], 324.021 [324.02.1], 4504.021 [4504.02.1], or 5739.022 [5739.02.2] of the Revised Code, shall not be considered an additional tax voted by the electorate.

Subject to division (G) of section 5705.29 of the Revised Code, money in a reserve balance account established by a county, township, or municipal corporation under section 5705.13 of the Revised Code shall not be considered an unencumbered balance or revenue under division (E)(3) or (4) of this section.

If a county, township, or municipal corporation has created and maintains a nonexpendable trust fund under section 5705.131 [5705.13.1] of the Revised Code, the principal of the fund, and any additions to the principal arising from sources other than the reinvestment of investment earnings arising from such a fund, shall not be considered an unencumbered balance or revenue under division (E)(3) or (4) of this section. Only investment earnings arising from investment of the principal or investment of such additions to principal may be considered an unencumbered balance or revenue under those divisions.

(F) The total expenditures calculated pursuant to division (C) of this section, less the deductions authorized in divisions (D) and (E) of this section, shall be known as the "relative need" of the subdivision, for the purposes of this section.

(G) The budget commission shall total the relative need of all participating subdivisions in the county, and shall compute a relative need factor by dividing the total estimate of the undivided local government fund by the total relative need of all participating subdivisions.

(H) The relative need of each subdivision shall be multiplied by the relative need factor to determine the proportionate share of the subdivision in the undivided local government fund of the county; provided, that the maximum proportionate share of a county shall not exceed the following maximum percentages

of the total estimate of the undivided local government fund governed by the relationship of the percentage of the population of the county that resides within municipal corporations within the county to the total population of the county as reported in the reports on population in Ohio by the department of development as of the twentieth day of July of the year in which the tax budget is filed with the budget commission:

Percentage of municipal Percentage share

Percentage of municipal population within the county:	Percentage share of the county shall not exceed:
Less than forty-one per cent	Sixty per cent
Forty-one per cent or more but less than eighty-one per cent	Fifty per cent
Eighty-one per cent or more	Thirty per cent

Where the proportionate share of the county exceeds the limitations established in this division, the budget commission shall adjust the proportionate shares determined pursuant to this division so that the proportionate share of the county does not exceed these limitations, and it shall increase the proportionate shares of all other subdivisions on a pro rata basis. In counties having a population of less than one hundred thousand, not less than ten per cent shall be distributed to the townships therein.

(I) The proportionate share of each subdivision in the undivided local government fund determined pursuant to division (H) of this section for any calendar year shall not be less than the product of the average of the percentages of the undivided local government fund of the county as apportioned to that subdivision for the calendar years 1968, 1969, and 1970, multiplied by the total amount of the undivided local government fund of the county apportioned pursuant to former section 5735.23 of the Revised Code for the calendar year 1970. For the purposes of this division, the total apportioned amount for the calendar year 1970 shall be the amount actually allocated to the county in 1970 from the state collected intangible tax as levied by section 5707.03 of the Revised Code and distributed pursuant to section 5725.24 of the Revised Code, plus the amount received by the county in the calendar year 1970 pursuant to division (B)(1) of former section 5739.21 of the Revised Code, and distributed pursuant to former section 5739.22 of the Revised Code. If the total amount of the undivided local government fund for any calendar year is less than the amount of the undivided local government fund apportioned pursuant to former section 5739.23 of the Revised Code for the calendar year 1970, the minimum amount guaranteed to each subdivision for that calendar year pursuant to this division shall be reduced on a basis proportionate to the amount by which the amount of the undivided local government fund for that calendar year is less than the amount of the undivided local government fund apportioned for the calendar year 1970.

(J) On the basis of such apportionment, the county auditor shall compute the percentage share of each such subdivision in the undivided local government fund and shall at the same time certify to the tax commissioner the percentage share of the county as a subdivision. No payment shall be made from the undivided local government fund, except in accordance with such percentage shares.

Within ten days after the budget commission has made its apportionment, whether conducted pursuant to section 5747.51 or 5747.53 of the Revised Code, the auditor shall publish a list of the subdivisions and the amount each is to receive from the undivided local government fund and the percentage share of each subdivision, in a newspaper or newspapers of countywide circulation, and send a copy of such allocation to the tax commissioner.

The county auditor shall also send by certified mail, return receipt requested, a copy of such allocation to the fiscal officer of each subdivision entitled to participate in the allocation of the undivided local

government fund of the county. This copy shall constitute the official notice of the commission action referred to in section 5705.37 of the Revised Code.

All money received into the treasury of a subdivision from the undivided local government fund in a county treasury shall be paid into the general fund and used for the current operating expenses of the subdivision.

If a municipal corporation maintains a municipal university, such municipal university, when the board of trustees so requests the legislative authority of the municipal corporation, shall participate in the money apportioned to such municipal corporation from the total local government fund, however created and constituted, in such amount as requested by the board of trustees, provided such sum does not exceed nine per cent of the total amount paid to the municipal corporation.

If any public official fails to maintain the records required by sections 5747.50 to 5747.55 of the Revised Code or by the rules issued by the tax commissioner, the auditor of state, or the treasurer of state pursuant to such sections, or fails to comply with any law relating to the enforcement of such sections, the local government fund money allocated to the county shall be withheld until such time as the public official has complied with such sections or such law or the rules issued pursuant thereto.

HISTORY: 134 v H 475 (Eff 12-20-71); 136 v H 920 (Eff 10-11-76); 140 v H 260 (Eff 9-27-83); 141 v H 146 (Eff 9-11-85); 141 v H 201 (Eff 9-11-85); 146 v H 86 (Eff 11-1-95); 147 v H 426. Eff 7-22-98.

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H 149 § 1

2002 SESSION LAWS—FULL TEXT

5533.66 Jackie Mayer Miss America highway [Eff. 8-29-02]

The road known as state route number two, running in an easterly and westerly direction, commencing at the approach of the "Thomas A. Edison Memorial Bridge" and extending through Erie county only, shall be known as the "Jackie Mayer Miss America Highway."

The director of transportation may erect suitable markers along the highway indicating its name.

SUBSTITUTE HOUSE
BILL NO. 329

Act Effective Date: 8-29-02
Date Passed: 5-14-02
Date Approved by Governor: 5-30-02
Date Filed: 5-30-02
File Number: 145
Chief Sponsor: Blasdel

General and Permanent Nature: Per the Director of the Ohio Legislative Service Commission, this Act's section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Future Repeal: This Act repeals certain provisions of law, the repeal of which takes effect on dates different from the effective date of the Act itself. See Act section(s) 4.

To amend sections 5705.321, 5747.53, and 5747.63 of the Revised Code and to repeal Section 3 of this act on December 31, 2002, to allow local government funds under certain circumstances to be distributed among subdivisions under an alternative apportionment scheme without the approval of the largest municipal corporation in the county.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 5705.321, 5747.53, and 5747.63 of the Revised Code be amended to read as follows:

5705.321 Alternative method of apportionment of county library and local government support fund; appeals [Eff. 8-29-02]

(A) As used in this section:

(1) "City, located wholly or partially in the county, with the greatest population" means the city, located wholly or partially in the county, with the greatest population residing in the county; however, if the county budget commission on or before January 1, 1998, adopted an alternative method of apportionment that was approved by the city, located partially in the county, with the greatest population but not the greatest population residing in the county, "city, located wholly or partially in the county, with the greatest population" means the city, located wholly or partially in the county, with the greatest population whether residing in the county or not, if this alternative meaning is adopted by action of the board of county commissioners and a majority of

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the boards of township trustees and legislative authorities of municipal corporations located wholly or partially in the county.

(2) "Participating political subdivision" means a municipal corporation or township that satisfies all of the following:

(a) It is located wholly or partially in the county.

(b) It is not the city, located wholly or partially in the county, with the greatest population.

(c) Library and local government support fund moneys are apportioned to it under the county's alternative method or formula of apportionment in the current calendar year.

(B) In lieu of the method of apportionment of the county library and local government support fund provided by division (C) of section 5705.32 of the Revised Code, the county budget commission may provide for the apportionment of such the fund under an alternative method or on a formula basis as authorized by this section. Such

Except as otherwise provided in division (C) of this section, the alternative method of apportionment shall have first been approved by all of the following governmental units: the board of county commissioners; the legislative authority of the city, located wholly or partially in the county, with the greatest population; and a majority of the boards of township trustees and legislative authorities of municipal corporations, located wholly or partially in the county, excluding the legislative authority of the city, located wholly or partially in the county, with the greatest population. In granting or denying such approval for an alternative method of apportionment, the board of county commissioners, boards of township trustees, and legislative authorities of municipal corporations shall act by motion. A motion to approve shall be passed upon a majority vote of the members of a board of county commissioners, board of township trustees, or legislative authority of a municipal corporation, shall take effect immediately, and need not be published. Any

Any alternative method of apportionment adopted and approved under this section division may be revised, amended, or repealed in the same manner as it may be adopted and approved. If an alternative method of apportionment adopted and approved under this section division is repealed, the county library and local government support fund shall be apportioned among the subdivisions eligible to participate therein in the fund, commencing in the ensuing calendar year, under the apportionment provided in divisions (B) and (C) of section 5705.32 of the Revised Code, unless the repeal occurs by operation of division (C) of this section or a new method for apportionment of such the fund is provided in the action of repeal.

(B)(C) This division applies only in counties in which the city, located wholly or partially in the county, with the greatest population has a population of twenty thousand or less and a population that is less than fifteen per cent of the total population of the county. In such a county, the legislative authorities or boards of township trustees of two or more participating political subdivisions, which together have a population residing in the county that is a majority of the total population of the county, each may adopt a resolution to exclude the approval otherwise required of the legislative authority of the city, located wholly or partially in the county, with the greatest population. All of the resolutions to exclude that approval shall be adopted not later than the first Monday of August of the year preceding the calendar year in which distributions are to be made under an alternative method of apportionment.

A motion granting or denying approval of an alternative method of apportionment under this division shall be adopted by a majority vote of the members of the board of county commissioners and by a majority vote of a majority of the boards of township trustees and legislative authorities of the municipal corporations located wholly or partially in the county, other than the city, located wholly or partially in the county, with the greatest population, shall take effect immediately, and need not be published. The alternative method of apportionment under this division shall be adopted and approved annually, not later than the first Monday of August of the year preceding the calendar year in which distributions are to be made under it. A motion granting approval of an alternative method of apportionment under this division repeals any existing alternative method of apportionment, effective with distributions to be made from the fund in the ensuing calendar year. An alternative method of apportionment under this division shall not be revised or amended after the first Monday of August of the year preceding the calendar year in which distributions are to be made under it.

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(D) In determining the an alternative method of apportionment authorized by this section, the county budget commission may include in such the method any factor considered to be appropriate and reliable, in the sole discretion of the county budget commission.

(C)(E) On the basis of any alternative method of apportionment adopted and approved as authorized by this section, as certified by the auditor to the county treasurer, the county treasurer shall make distribution of the money in the county library and local government support fund to each subdivision eligible to participate in such the fund, and the auditor, when the amount of such those shares is in the custody of the treasurer in the amounts so computed to be due the respective subdivisions, shall at the same time certify to the tax commissioner the percentage share of the county as a subdivision. All money received into the treasury of a subdivision from the county library and local government support fund in a county treasury shall be paid into the general fund and used for the current operating expenses of the subdivision.

(D)(F) The actions of the county budget commission taken pursuant to this section are final and may not be appealed to the board of tax appeals, except on the issues of abuse of discretion and failure to comply with the formula.

5747.53 Alternative method of apportioning fund by county budget commission [Eff. 8-29-02]

(A) As used in this section:

(1) "City, located wholly or partially in the county, with the greatest population" means the city, located wholly or partially in the county, with the greatest population residing in the county; however, if the county budget commission on or before January 1, 1998, adopted an alternative method of apportionment that was approved by the legislative authority of the city, located partially in the county, with the greatest population but not the greatest population residing in the county, "city, located wholly or partially in the county, with the greatest population" means the city, located wholly or partially in the county, with the greatest population whether residing in the county or not, if this alternative meaning is adopted by action of the board of county commissioners and a majority of the boards of township trustees and legislative authorities of municipal corporations located wholly or partially in the county.

(2) "Participating political subdivision" means a municipal corporation or township that satisfies all of the following:

(a) It is located wholly or partially in the county.

(b) It is not the city, located wholly or partially in the county, with the greatest population.

(c) Undivided local government fund moneys are apportioned to it under the county's alternative method or formula of apportionment in the current calendar year.

(B) In lieu of the method of apportionment of the undivided local government fund of the county provided by section 5747.51 of the Revised Code, the county budget commission may provide for the apportionment of such the fund under an alternative method or on a formula basis as authorized by this section. Such

Except as otherwise provided in division (C) of this section, the alternative method of apportionment shall have first been approved by all of the following governmental units: the board of county commissioners; the legislative authority of the city, located wholly or partially in the county, with the greatest population; and a majority of the boards of township trustees and legislative authorities of municipal corporations, located wholly or partially in the county, excluding the legislative authority of the city, located wholly or partially in the county, with the greatest population. In granting or denying such approval for an alternative method of apportionment, the board of county commissioners, boards of township trustees, and legislative authorities of municipal corporations shall act by motion. A motion to approve shall be passed upon a majority vote of the members of a board of county commissioners, board of township trustees, or legislative authority of a municipal corporation, shall take effect immediately, and need not be published. Any

Any alternative method of apportionment adopted and approved under this section division may be revised, amended, or repealed in the same manner as it may be adopted and approved. In the event a If an alternative method of apportionment adopted and approved under this section division is repealed, the undivided local government fund of the county shall be appor-

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tioned among the subdivisions eligible to participate therein in the fund, commencing in the ensuing calendar year, under the apportionment provided in section 5747.52 of the Revised Code, unless the repeal occurs by operation of division (C) of this section or a new method for apportionment of such the fund is provided in the action of repeal.

As used in this division, the term "legislative authority of the city, located wholly or partially in the county, with the greatest population" means the legislative authority of the city, located wholly or partially in the county, with the greatest population residing in the county; however, if the county budget commission on or before January 1, 1998, adopted an alternative method of apportionment which was approved by the legislative authority of the city, located partially in the county, with the greatest population but not the greatest population residing in the county, the term shall be deemed to mean the legislative authority of the city, located wholly or partially in the county, with the greatest population whether residing in the county or not, if such alternative meaning is adopted by action of the board of county commissioners and a majority of the boards of township trustees and legislative authorities of municipal corporations located wholly or partially in the county.

(B)(C) This division applies only in counties in which the city, located wholly or partially in the county, with the greatest population has a population of twenty thousand or less and a population that is less than fifteen per cent of the total population of the county. In such a county, the legislative authorities or boards of township trustees of two or more participating political subdivisions, which together have a population residing in the county that is a majority of the total population of the county, each may adopt a resolution to exclude the approval otherwise required of the legislative authority of the city, located wholly or partially in the county, with the greatest population. All of the resolutions to exclude that approval shall be adopted not later than the first Monday of August of the year preceding the calendar year in which distributions are to be made under an alternative method of apportionment.

A motion granting or denying approval of an alternative method of apportionment under this division shall be adopted by a majority vote of the members of the board of county commissioners and by a majority vote of a majority of the boards of township trustees and legislative authorities of the municipal corporations located wholly or partially in the county, other than the city, located wholly or partially in the county, with the greatest population, shall take effect immediately, and need not be published. The alternative method of apportionment under this division shall be adopted and approved annually, not later than the first Monday of August of the year preceding the calendar year in which distributions are to be made under it. A motion granting approval of an alternative method of apportionment under this division repeals any existing alternative method of apportionment, effective with distributions to be made from the fund in the ensuing calendar year. An alternative method of apportionment under this division shall not be revised or amended after the first Monday of August of the year preceding the calendar year in which distributions are to be made under it.

(D) In determining the an alternative method of apportionment authorized by this section, the county budget commission may include in such the method any factor considered to be appropriate and reliable, in the sole discretion of the county budget commission.

(E) The limitations set forth in section 5747.51 of the Revised Code, stating the maximum amount that the county may receive from such the undivided local government fund and the minimum amount the townships in counties having a population of less than one hundred thousand may receive from such the fund, are applicable to any alternative method of apportionment authorized under this section.

(F) On the basis of any alternative method of apportionment adopted and approved as authorized by this section, as certified by the auditor to the county treasurer, the county treasurer shall make distribution of the money in the undivided local government fund to each subdivision eligible to participate in such the fund, and the auditor, when the amount of such those shares is in the custody of the treasurer in the amounts so computed to be due the respective subdivisions, shall at the same time certify to the tax commissioner the percentage share of the county as a subdivision. All money received into the treasury of a subdivision from the undivided local government fund in a county treasury shall be paid into the general fund and used for the current operating expenses of the subdivision. If a municipal corporation maintains a municipal university, such municipal the university, when the board of trustees so requests the legislative authority of the municipal corporation, shall participate in the money apportioned to

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such the municipal corporation from the total local government fund, however created and constituted, in such the amount as requested by the board of trustees, provided such sum that amount does not exceed nine per cent of the total amount paid to the municipal corporation.

(E)(G) The actions of the county budget commission taken pursuant to this section are final and may not be appealed to the board of tax appeals, except on the issues of abuse of discretion and failure to comply with the formula.

5747.63 Alternative methods of determination of amounts to be apportioned from undivided local government revenue assistance fund [Eff. 8-29-02]

(A) As used in this section:

(1) "City, located wholly or partially in the county, with the greatest population" means the city, located wholly or partially in the county, with the greatest population residing in the county; however, if the county budget commission on or before January 1, 1998, adopted an alternative method of apportionment that was approved by the legislative authority of the city, located partially in the county, with the greatest population but not the greatest population residing in the county, "city, located wholly or partially in the county, with the greatest population" means the city, located wholly or partially in the county, with the greatest population whether residing in the county or not, if this alternative meaning is adopted by action of the board of county commissioners and a majority of the boards of township trustees and legislative authorities of municipal corporations located wholly or partially in the county.

(2) "Participating political subdivision" means a municipal corporation or township that satisfies all of the following:

(a) It is located wholly or partially in the county.

(b) It is not the city, located wholly or partially in the county, with the greatest population.

(c) Undivided local government revenue assistance fund moneys are apportioned to it under the county's alternative method or formula of apportionment in the current calendar year.

(B) In lieu of the method of apportionment of the undivided local government revenue assistance fund of the county provided by section 5747.62 of the Revised Code, the county budget commission may provide for the apportionment of such the fund under an alternative method or on a formula basis as authorized by this section. Such

Except as otherwise provided in division (C) of this section, the alternative method of apportionment shall have first been approved by all of the following governmental units: the board of county commissioners; the legislative authority of the city, located wholly or partially in the county, with the greatest population; and a majority of the boards of township trustees and legislative authorities of municipal corporations, located wholly or partially in the county, excluding the legislative authority of the city, located wholly or partially in the county, with the greatest population. In granting or denying such approval for an alternative method of apportionment, the board of county commissioners, boards of township trustees, and legislative authorities of municipal corporations shall act by motion. A motion to approve shall be passed upon a majority vote of the members of a board of county commissioners, board of township trustees, or legislative authority of a municipal corporation, shall take effect immediately, and need not be published. Any

Any alternative method of apportionment adopted and approved under this section division may be revised, amended, or repealed in the same manner as it may be adopted and approved. In the event a If an alternative method of apportionment adopted and approved under this section division is repealed, the undivided local government revenue assistance fund of the county shall be apportioned among the subdivisions eligible to participate therein in the fund, commencing in the ensuing fiscal year, under the apportionment provided in section 5747.62 of the Revised Code, unless the repeal occurs by operation of division (C) of this section or a new method for apportionment of such the fund is provided in the action of repeal.

As used in this division, the term "legislative authority of the city, located wholly or partially in the county, with the greatest population" means the legislative authority of the city, located wholly or partially in the county, with the greatest population residing in the county; however, if the county budget commission on or before January 1, 1998, adopted an alternative method of apportionment which was approved by the legislative authority of the city, located partially in the

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county, with the greatest population but not the greatest population residing in the county, the term shall be deemed to mean the legislative authority of the city, located wholly or partially in the county, with the greatest population whether residing in the county or not, if such alternative meaning is adopted by action of the board of county commissioners and a majority of the boards of township trustees and legislative authorities of municipal corporations located wholly or partially in the county.

(B)(C) This division applies only in counties in which the city, located wholly or partially in the county, with the greatest population has a population of twenty thousand or less and a population that is less than fifteen per cent of the total population of the county. In such a county, the legislative authorities or boards of township trustees of two or more participating political subdivisions, which together have a population residing in the county that is a majority of the total population of the county, each may adopt a resolution to exclude the approval otherwise required of the legislative authority of the city, located wholly or partially in the county, with the greatest population. All of the resolutions to exclude that approval shall be adopted not later than the first Monday of August of the year preceding the calendar year in which distributions are to be made under an alternative method of apportionment.

A motion granting or denying approval of an alternative method of apportionment under this division shall be adopted by a majority vote of the members of the board of county commissioners and by a majority vote of a majority of the boards of township trustees and legislative authorities of the municipal corporations located wholly or partially in the county, other than the city, located wholly or partially in the county, with the greatest population, shall take effect immediately, and need not be published. The alternative method of apportionment shall be adopted and approved annually, not later than the first Monday of August of the year preceding the calendar year in which distributions are to be made under it. A motion granting approval of an alternative method of apportionment under this division repeals any existing alternative method of apportionment, effective with distributions to be made from the fund in the ensuing calendar year. An alternative method of apportionment under this division shall not be revised or amended after the first Monday of August of the year preceding the calendar year in which distributions are to be made under it.

(D) In determining the an alternative method of apportionment authorized by this section, the county budget commission may include in such the method any factor considered to be appropriate and reliable, in the sole discretion of the county budget commission, but the commission shall give special consideration to the needs of villages incorporated after January 1, 1980.

(E) The limitations set forth in section 5747.62 of the Revised Code, stating the maximum amount that the county may receive from such the undivided local government revenue assistance fund and the minimum amount the townships in counties having a population of less than one hundred thousand may receive from such the fund, are applicable to any alternative method of apportionment authorized under this section.

(F) On the basis of any alternative method of apportionment adopted and approved as authorized by this section, as certified by the auditor to the county treasurer, the county treasurer shall make distribution of the money in the undivided local government revenue assistance fund to each subdivision eligible to participate in such the fund, and the auditor, when the amount of such those shares is in the custody of the treasurer in the amounts so computed to be due the respective subdivisions, shall at the same time certify to the tax commissioner the percentage share of the county as a subdivision. All money received by a subdivision from the county undivided local government revenue assistance fund shall be paid into the subdivision's general fund and used for the its current operating expenses.

(G) The actions of the county budget commission taken pursuant to this section are final and may not be appealed to the board of tax appeals, except on the issues of abuse of discretion and failure to comply with the formula.

SECTION 2. That existing sections 5705.321, 5747.53, and 5747.63 of the Revised Code are hereby repealed.

SECTION 3. (A) Notwithstanding the date specified in division (C) of section 5705.321, division (C) of section 5747.53, or division (C) of section 5747.63 of the Revised Code, as amended by this act, an alternative method of apportionment may be adopted and approved as

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§ 5747.53. Alternative method of apportionment.

(A) As used in this section:

(1) "City, located wholly or partially in the county, with the greatest population" means the city, located wholly or partially in the county, with the greatest population residing in the county; however, if the county budget commission on or before January 1, 1998, adopted an alternative method of apportionment that was approved by the legislative authority of the city, located partially in the county, with the greatest population but not the greatest population residing in the county, "city, located wholly or partially in the county, with the greatest population" means the city, located wholly or partially in the county, with the greatest population whether residing in the county or not, if this alternative meaning is adopted by action of the board of county commissioners and a majority of the boards of township trustees and legislative authorities of municipal corporations located wholly or partially in the county.

(2) "Participating political subdivision" means a municipal corporation or township that satisfies all of the following:

- (a) It is located wholly or partially in the county.
- (b) It is not the city, located wholly or partially in the county, with the greatest population.
- (c) Undivided local government fund moneys are apportioned to it under the county's alternative method or formula of apportionment in the current calendar year.

(B) In lieu of the method of apportionment of the undivided local government fund of the county provided by section 5747.51 of the Revised Code, the county budget commission may provide for the apportionment of the fund under an alternative method or on a formula basis as authorized by this section.

Except as otherwise provided in division (C) of this section, the alternative method of apportionment shall have first been approved by all of the following governmental units: the board of county commissioners; the legislative authority of the city, located wholly or partially in the county, with the greatest population; and a majority of the boards of township trustees and legislative authorities of municipal corporations, located wholly or partially in the county, excluding the legislative authority of the city, located wholly or partially in the county, with the greatest population. In granting or denying approval for an alternative method of apportionment, the board of county commissioners, boards of township trustees, and legislative authorities of municipal corporations shall act by motion. A motion to approve shall be passed upon a majority vote of the members of a board of county commissioners, board of township trustees, or legislative authority of a municipal corporation, shall take effect immediately, and need not be published.

Any alternative method of apportionment adopted and approved under this division may be revised, amended, or repealed in the same manner as it may be adopted and approved. If an alternative method of apportionment adopted and approved under this division is repealed, the undivided local government fund of the county shall be apportioned among the subdivisions eligible to participate in the fund, commencing in the ensuing calendar year, under the apportionment provided in section 5747.52 of the Revised Code, unless the repeal occurs by operation of division (C) of this section or a new method for apportionment of the fund is provided in the action of repeal.

(C) This division applies only in counties in which the city, located wholly or partially in the county,

with the greatest population has a population of twenty thousand or less and a population that is less than fifteen per cent of the total population of the county. In such a county, the legislative authorities or boards of township trustees of two or more participating political subdivisions, which together have a population residing in the county that is a majority of the total population of the county, each may adopt a resolution to exclude the approval otherwise required of the legislative authority of the city, located wholly or partially in the county, with the greatest population. All of the resolutions to exclude that approval shall be adopted not later than the first Monday of August of the year preceding the calendar year in which distributions are to be made under an alternative method of apportionment.

A motion granting or denying approval of an alternative method of apportionment under this division shall be adopted by a majority vote of the members of the board of county commissioners and by a majority vote of a majority of the boards of township trustees and legislative authorities of the municipal corporations located wholly or partially in the county, other than the city, located wholly or partially in the county, with the greatest population, shall take effect immediately, and need not be published. The alternative method of apportionment under this division shall be adopted and approved annually, not later than the first Monday of August of the year preceding the calendar year in which distributions are to be made under it. A motion granting approval of an alternative method of apportionment under this division repeals any existing alternative method of apportionment, effective with distributions to be made from the fund in the ensuing calendar year. An alternative method of apportionment under this division shall not be revised or amended after the first Monday of August of the year preceding the calendar year in which distributions are to be made under it.

(D) In determining an alternative method of apportionment authorized by this section, the county budget commission may include in the method any factor considered to be appropriate and reliable, in the sole discretion of the county budget commission.

(E) The limitations set forth in section 5747.51 of the Revised Code, stating the maximum amount that the county may receive from the undivided local government fund and the minimum amount the townships in counties having a population of less than one hundred thousand may receive from the fund, are applicable to any alternative method of apportionment authorized under this section.

(F) On the basis of any alternative method of apportionment adopted and approved as authorized by this section, as certified by the auditor to the county treasurer, the county treasurer shall make distribution of the money in the undivided local government fund to each subdivision eligible to participate in the fund, and the auditor, when the amount of those shares is in the custody of the treasurer in the amounts so computed to be due the respective subdivisions, shall at the same time certify to the tax commissioner the percentage share of the county as a subdivision. All money received into the treasury of a subdivision from the undivided local government fund in a county treasury shall be paid into the general fund and used for the current operating expenses of the subdivision. If a municipal corporation maintains a municipal university, the university, when the board of trustees so requests the legislative authority of the municipal corporation, shall participate in the money apportioned to the municipal corporation from the total local government fund, however created and constituted, in the amount requested by the board of trustees, provided that amount does not exceed nine per cent of the total amount paid to the municipal corporation.

(G) The actions of the county budget commission taken pursuant to this section are final and may not be appealed to the board of tax appeals, except on the issues of abuse of discretion and failure to comply with the formula.

HISTORY: 134 v H 475 (Eff 12-20-71); 136 v H 1 (Eff 6-13-75); 141 v H 201 (Eff 7-1-85); 144 v H 298 (Eff 7-26-91); 148 v H 185 (Eff 7-26-99); 149 v H 329. Eff 8-29-2002.

§ 5747.55. Appeal of action by county budget commission.

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

(A) The notice of appeal shall be signed by the authorized fiscal officer and shall set forth in clear and concise language:

(1) A statement of the action of the budget commission appealed from, and the date of the receipt by the subdivision of the official certificate or notice of such action;

(2) The error or errors the taxing district believes the budget commission made;

(3) The specific relief sought by the taxing district.

(B) The notice of appeal shall have attached thereto:

(1) A certified copy of the resolution of the taxing authority authorizing the fiscal officer to file the appeal;

(2) An exact copy of the official certificate, or notice of the action of the budget commission appealed from;

(3) An exact copy of the budget request filed with the budget commission by the complaining subdivision, with the date of filing noted thereon.

(C) There shall also be attached to the notice of appeal a statement showing:

(1) The name of the fund involved, the total amount in dollars allocated, and the exact amount in dollars allocated to each participating subdivision;

(2) The amount in dollars which the complaining subdivision believes it should have received;

(3) 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.

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

(E) The total of the undivided local government fund or undivided local government revenue assistance fund to be allocated by the board of tax appeals upon appeal is the total of that fund allocated by the budget commission to those subdivisions which are appellants and appellees before the board of tax appeals.

HISTORY: 134 v H 475 (Eff 12-20-71); 143 v H 111. Eff 7-1-89.

not satisfy the mandatory jurisdictional requirements of RC § 5747.55(C), dismissal of such appeal by the board of tax appeals for want of jurisdiction is reasonable and lawful: *Cincinnati v. Budget Comm.*, 59 Ohio St. 2d 43, 13 Ohio Op. 3d 32, 391 N.E.2d 734 (1979).

The budget commission does not waive its right to raise the question of lack of subject matter jurisdiction of the board of tax appeals once the board has ordered a partial distribution of the local government fund: *Painesville v. Lake County Budget Comm.*, 56 Ohio St. 2d 282, 10 Ohio Op. 3d 411, 383 N.E.2d 896 (1978).

The board of tax appeals lacks subject matter jurisdiction over an appeal from an allocation of a local government fund by a budget commission where the notice of appeal does not specifically set forth the errors complained of. A notice of appeal which merely states the allegedly correct amount is insufficient: *Painesville v. Lake County Budget Comm.*, 56 Ohio St. 2d 282, 10 Ohio Op. 3d 411, 383 N.E.2d 896 (1978).

New evidence

In an appeal to the board of tax appeals from the allocation of the local government fund, the board is free to hear new evidence: *Springfield v. Bethel Township*, 61 Ohio St. 2d 132, 15 Ohio Op. 3d 165, 399 N.E.2d 1237 (1980).

Notice of appeal

Where a taxing district alleges in good faith that a budget commission failed to follow any of the calculations mandated by RC § 5747.51, the taxing district's notice of appeal is sufficient to confer jurisdiction on the Board of Tax Appeals where that notice of appeal assigns error to each and every statutory step of the budget process: *Austintown Twp. v. Mahoning Cty. Budget Comm.*, 24 Ohio St. 3d 83, 24 Ohio B. 229, 493 N.E.2d 550 (1986).

Park districts

A park district lacks standing to appeal from the allocation of the local government fund: *Warren Cty. Park District v. Warren Cty. Budget Comm.*, 37 Ohio St. 3d 68, 523 N.E.2d 843 (1988).

Parties

The appellate procedure described in RC § 5747.55 applies to an appeal of a county budget commission's apportionment of the undivided local government fund by an alternative formula as allowed by RC §§ 5747.51 and 5747.53. In such an appeal, therefore, the only appellees that the appellant must name are those believed to have received more than their proper share in the challenged apportionment: *Mogadore v. Summit Cty. Budget Comm.*, 36 Ohio App. 3d 42, 520 N.E.2d 1370 (1987).

Revised Code § 5747.55 states that only those parties which a subdivision believes were allocated an excessive share of the undivided local government fund can be made parties to an appeal of a budget commission's allocation: *Englewood v. Montgomery Cty. Budget Comm.*, 39 Ohio App. 3d 153, 530 N.E.2d 924 (1987).

The only parties necessary to an appeal from an order of the county budget commission to the Board of Tax Appeals concerning the allocation of unvoted property tax millage pursuant to RC § 5705.31 are those subdivisions which both (1) overlap the appealing subdivision and (2) are alleged by the appealing subdivision to have received a disproportionate allocation of the unvoted tax millage: *Berea City School District v. Budget Comm.*, 60 Ohio St. 2d 50, 14 Ohio Op. 3d 209, 396 N.E.2d 767 (1979).

Time to perfect appeal

Pursuant to the express terms of RC § 5705.37, the permissible time in which to perfect an appeal to the Board of

Tax Appeals may be triggered by a subdivision's receipt of either the official certificate as set forth in RC § 5705.37 or by receipt of notice as defined in RC § 5747.51(J): *Budget Comm. of Brown Cty. v. Georgetown*, 24 Ohio St. 3d 33, 24 Ohio B. 76, 492 N.E.2d 826 (1986).

§ 5747.60 Commissioner may delegate investigation powers; cooperation in prosecutions.

For purposes of enforcing this chapter, the tax commissioner, in accordance with section 5743.45 of the Revised Code, may delegate any investigation powers of the commissioner to any employee of the department of taxation who has been certified by the Ohio peace officer training commission and who is engaged in the enforcement of this chapter. Upon such a delegation in accordance with that section, the provisions of that section relative to the powers and authority of the employee and the suspension or revocation of the delegation apply. No employee of the department shall divulge any information acquired as a result of any investigation pursuant to this chapter, except as may be required by the commissioner or a court.

The department shall cooperate with the attorney general, local law enforcement officials, and the appropriate agencies of the federal government and other states in the investigation and prosecution of violations of this chapter.

HISTORY: 143 v S 223 (EFF 4-10-91); 146 v H 670, EFF 12-2-96.

§ 5747.61 Local government revenue assistance fund.

(A) As used in this section:

- (1) "Fiscal year" means the calendar year.
- (2) "Year's fund balance" means for any fiscal year, the total of the amount available in the local government revenue assistance fund for distribution under this section during that year.
- (3) "Population" means the more recent of either the latest federal estimated census figures, or the latest decennial census figures, that include population totals for each county in the state as of the first day of June preceding the year for which the computation is made.
- (4) "County's proportionate share" for a fiscal year means the amount obtained by dividing the county's population by the state's population.

(B) There is hereby created in the state treasury the local government revenue assistance fund. The fund shall consist of the taxes credited to it under sections 5727.45, 5733.12, 5739.21, 5741.03, and 5747.03 of the Revised Code and shall be distributed among the counties of the state as provided in division (D) of this section.

(C) Annually by the twenty-fifth day of July, the tax commissioner shall:

- (1) Determine each county's proportionate share for the ensuing fiscal year;
- (2) Estimate the ensuing year's fund balance; and

(3) Compute and certify to the county auditor of each county that county's estimated proceeds for the ensuing fiscal year based on the county's proportionate share and the estimated fund balance.

(D) On or before the tenth day of each month, the commissioner shall distribute to counties the amount credited to the local government revenue assistance fund from taxes received during the preceding month. The amount payable to each county shall be determined by multiplying the county's proportionate share for the fiscal year in which the distribution is made by the total amount to be distributed from the local government revenue assistance fund in that month. Each county's payment shall be made to the county treasurer.

(E) Money paid into the treasury of a county under this section shall be credited to the undivided local government revenue assistance fund, which each county shall create in its treasury. By the twentieth day of each month the county auditor shall issue warrants against the undivided local government revenue assistance fund to distribute the balance in the fund to the county and the municipal corporations, townships, and park districts in the county allowed as provided by the county budget commission pursuant to section 5747.62 of the Revised Code. Except as otherwise expressly provided by the commission, the amount to be distributed to each participating subdivision in each month of a fiscal year shall be the same per cent of that month's distributions that the amount apportioned to the subdivision for the fiscal year is of the total amount apportioned to all subdivisions.

HISTORY: 142 v H 171, § 3.03 (Eff 7-1-89); 143 v H 111, Eff 7-1-89.

Cross-References to Related Sections

Crediting of taxes and penalties to fund, RC §§ 5727.45, 5727.84, 5733.12, 5739.21, 5741.03, 5747.03.
Withholding of funds pending compliance, RC § 5747.62.

Research Aids

Local government revenue assistance fund:
O-Jur3d: Tax §§ 1099, 1100

§ 5747.62 Determination of apportionment of fund; withholding pending compliance.

(A) As used in this section and section 5747.63 of the Revised Code, "subdivision" means a municipal corporation, township, park district, or county.

(B) At each annual regular session of the county budget commission convened pursuant to section 5705.27 of the Revised Code, each auditor shall present to the commission the certificate of the commissioner, the annual tax budget and estimates, and the records showing the action of the commission in its last preceding regular session. The commission, after extending to the representatives of each subdivision an opportunity to be heard, under oath administered by any member of the commission, and considering all the facts and information presented to it by the auditor, shall determine the amount of the undivided local

government revenue assistance fund needed by and to be apportioned to each subdivision for current operating expenses, as shown in the tax budget of the subdivision. This determination shall be made pursuant to divisions (C) to (H) of this section, unless the commission has provided for a formula pursuant to section 5747.63 of the Revised Code. Nothing in this section prevents the budget commission, for the purpose of apportioning the undivided local government revenue assistance fund, from inquiring into the claimed needs of any subdivision as stated in its tax budget, or from adjusting claimed needs to reflect actual needs. For the purposes of this section, "current operating expenses" means the lawful expenditures of a subdivision, except those for permanent improvements and except payments for interest, sinking fund, and retirement of bonds, notes, and certificates of indebtedness of the subdivision.

(C) The commission shall determine the combined total of the estimated expenditures, including transfers, from the general fund and any special funds other than special funds established for road and bridge; street construction, maintenance, and repair; state highway improvement; and gas, water, sewer, and electric public utilities operated by a subdivision, as shown in the subdivision's tax budget for the ensuing calendar year.

(D) From the combined total of expenditures calculated pursuant to division (C) of this section, the commission shall deduct the following expenditures, if included in these funds in the tax budget:

(1) Expenditures for permanent improvements as defined in division (F) of section 5705.01 of the Revised Code;

(2) In the case of counties and townships, transfers to the road and bridge fund, and in the case of municipalities, transfers to the street construction, maintenance, and repair fund and the state highway improvement fund;

(3) Expenditures for the payment of debt charges;

(4) Expenditures for the payment of judgments.

(E) In addition to the deductions made pursuant to division (D) of this section, revenues accruing to the general fund and any special fund considered under division (C) of this section from the following sources shall be deducted from the combined total of expenditures calculated pursuant to division (C) of this section:

(1) Taxes levied within the ten-mill limitation, as defined in section 5705.02 of the Revised Code;

(2) The budget commission allocation of estimated county library and local government support fund revenues to be distributed pursuant to section 5747.48 of the Revised Code;

(3) Estimated unencumbered balances as shown on the tax budget as of the thirty-first day of December of the current year in the general fund, but not any estimated balance in any special fund considered in division (C) of this section;

(4) Revenue, including transfers, shown in the general fund and any special funds other than special funds established for road and bridge; street construction, maintenance, and repair; state highway improvement;

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and gas, water, sewer, and electric public utilities, from all other sources except those that a subdivision receives from an additional tax or service charge voted by its electorate or receives from special assessment or revenue bond collection. For the purposes of this division, where the charter of a municipal corporation prohibits the levy of an income tax, an income tax levied by the legislative authority of such municipal corporation pursuant to an amendment of the charter of that municipal corporation to authorize such a levy represents an additional tax voted by the electorate of that municipal corporation. For the purposes of this division, any measure adopted by a board of county commissioners pursuant to section 322.02, 324.02, 4504.02, or 5739.021 [5739.02.1] of the Revised Code, including those measures upheld by the electorate in a referendum conducted pursuant to section 322.021 [322.02.1], 324.021 [324.02.1], 4504.021 [4504.02.1], or 5739.022 [5739.02.2] of the Revised Code, shall not be considered an additional tax voted by the electorate.

Subject to division (G) of section 5705.29 of the Revised Code, money in a reserve balance account established by a county, township, or municipal corporation under section 5705.13 of the Revised Code shall not be considered an unencumbered balance or revenue under division (E)(3) or (4) of this section.

If a county, township, or municipal corporation has created and maintains a nonexpendable trust fund under section 5705.131 [5705.13.1] of the Revised Code, the principal of the fund, and any additions to the principal arising from sources other than the reinvestment of investment earnings arising from such a fund, shall not be considered an unencumbered balance or revenue under division (E)(3) or (4) of this section. Only investment earnings arising from investment of the principal or investment of such additions to principal may be considered an unencumbered balance or revenue under those divisions.

(F) The total expenditures calculated pursuant to division (C) of this section, less the deductions authorized in divisions (D) and (E) of this section, shall be known as the "relative need" of the subdivision, for the purposes of this section.

(G) The budget commission shall total the relative need of all participating subdivisions in the county, and shall compute a relative need factor by dividing the total estimate of the undivided local government revenue assistance fund by the total relative need of all participating subdivisions.

(H) The relative need of each subdivision shall be multiplied by the relative need factor to determine the proportionate share of the subdivision in the undivided local government revenue assistance fund of the county, provided that the maximum proportionate share of a county shall not exceed the following maximum percentages of the total estimate of the undivided local government revenue assistance fund governed by the relationship of the percentage of the population of the county that resides within municipal corporations within the county to the total population of the county as reported in the reports on population in Ohio by the department of development as of the

twentieth day of July of the year in which the tax budget is filed with the budget commission:

Percentage of municipal population within the county:	Percentage share of the county shall not exceed:
Less than forty-one per cent	Sixty per cent
Forty-one per cent or more but less than eighty-one per cent	Fifty per cent
Eighty-one per cent or more	Thirty per cent

Where the proportionate share of the county exceeds the limitations established in this division, the budget commission shall adjust the proportionate shares determined pursuant to this division so that the proportionate share of the county does not exceed these limitations, and it shall increase the proportionate shares of all other subdivisions on a pro rata basis. In counties having a population of less than one hundred thousand, not less than ten per cent shall be distributed to the townships therein.

(I) On the basis of such apportionment, the county auditor shall compute the percentage share of each such subdivision in the undivided local government revenue assistance fund and shall at the same time certify to the tax commissioner the percentage share of the county as a subdivision. No payment shall be made from the undivided local government revenue assistance fund, except in accordance with such percentage shares.

Within ten days after the budget commission has made its apportionment, whether conducted pursuant to this section or section 5747.63 of the Revised Code, the auditor shall publish a list of the subdivisions and the amount each is to receive from the undivided local government revenue assistance fund and the percentage share of each subdivision, in a newspaper or newspapers of countywide circulation, and send a copy of such apportionment to the tax commissioner.

The county auditor shall also send by certified mail, return receipt requested, a copy of such apportionment to the fiscal officer of each subdivision entitled to participate in the allocation of the undivided local government revenue assistance fund of the county. This copy shall constitute the official notice of the commission action referred to in section 5705.37 of the Revised Code.

All money received by a subdivision from the county undivided local government revenue assistance fund shall be paid into the subdivision's general fund and used for current operating expenses.

If any public official fails to maintain the records required by sections 5747.61 to 5747.63 of the Revised Code or by the rules issued by the tax commissioner, the auditor of state, or the treasurer of state pursuant to such sections, or fails to comply with any law relating to the enforcement of such sections, the local government revenue assistance fund money allocated to the county shall be withheld until such time as the public official

has complied with such sections or such law or the rules issued pursuant thereto.

HISTORY: 143 v H 111 (Eff 7-1-89); 146 v H 86 (Eff 11-1-95); 147 v H 426. Eff 7-22-98.

Cross-References to Related Sections

Alternative method of apportionment of undivided local government revenue assistance fund, RC § 5747.63.

Appeal of action by county budget commission, RC § 5747.55.

Contents of tax budget, RC § 5705.29.

Local government revenue assistance fund, RC § 5747.61.

CASE NOTES AND OAG

INDEX

- Generally
- Joint recreation district
- Notice
- Overlapping boundaries
- Prisoners

Generally

There are two methods of allocating undivided local government fund and undivided local government revenue assistance fund dollars to a county's political subdivisions: the statutory method specified in RC § § 5747.51 and 5747.62 and any alternative method adopted pursuant to RC § § 5747.53 and 5747.63. The statutory method requires a county budget commission to afford political subdivisions an "opportunity to be heard, under oath," before allocating ULGF and ILGRAF dollars because those statutes contemplate a needs-based allocation. The alternative method, however, does not require the budget commission to afford political subdivisions an opportunity to be heard under oath before allocating ULGF and ULGRAF dollars, because those statutes only require the county board of commissioners and the appropriate political subdivisions to approve the alternative formula before it is adopted by the budget commission: *E. Liverpool v. Columbiana Cty. Budget Comm.*, 105 Ohio St. 3d 410 (2005).

Joint recreation district

Because a joint recreation district is not included in the definition of "subdivision," as that term is used in RC § § 5747.50-5747.55 and in RC § § 5747.62-5747.63, a joint recreation district is not entitled to participate in a county's distribution of either the undivided local government fund or the undivided local government revenue assistance fund: OAG No. 97-017 (1997).

Notice

Neither RC § 5747.51(J) nor RC § 5747.62(I) provides for an alternative method of compliance with the mandatory notice requirements: *Girard v. Trumbull Cty. Budget Comm.*, 70 Ohio St. 3d 187, 638 N.E.2d 67 (1994).

Overlapping boundaries

When the boundaries of a municipal corporation and township overlap, the inhabitants of the overlapping territory are considered to be municipal residents for purposes of determining the percentage of a county's population residing in municipal corporations, and the cap on a county's share in the undivided local government fund pursuant to RC § 5747.51(H) and the undivided local government revenue assistance fund pursuant to RC § 5747.62(H). Opinion No. 2005-030 (2005).

Prisoners

Prisoners are included in the population of the municipal corporation where they are incarcerated for purposes of

determining the percentage of a county's population residing in municipal corporations, and the cap on a county's share in the undivided local government fund pursuant to RC § 5747.51(H) and the undivided local government revenue assistance fund pursuant to RC § 5747.62(H). Opinion No. 2005-030 (2005).

§ 5747.63 Alternative method of apportionment.

(A) As used in this section:

(1) "City, located wholly or partially in the county, with the greatest population" means the city, located wholly or partially in the county, with the greatest population residing in the county; however, if the county budget commission on or before January 1, 1998, adopted an alternative method of apportionment that was approved by the legislative authority of the city, located partially in the county, with the greatest population but not the greatest population residing in the county, "city, located wholly or partially in the county, with the greatest population" means the city, located wholly or partially in the county, with the greatest population whether residing in the county or not, if this alternative meaning is adopted by action of the board of county commissioners and a majority of the boards of township trustees and legislative authorities of municipal corporations located wholly or partially in the county.

(2) "Participating political subdivision" means a municipal corporation or township that satisfies all of the following:

(a) It is located wholly or partially in the county.

(b) It is not the city, located wholly or partially in the county, with the greatest population.

(c) Undivided local government revenue assistance fund moneys are apportioned to it under the county's alternative method or formula of apportionment in the current calendar year.

(B) In lieu of the method of apportionment of the undivided local government revenue assistance fund of the county provided by section 5747.62 of the Revised Code, the county budget commission may provide for the apportionment of the fund under an alternative method or on a formula basis as authorized by this section.

Except as otherwise provided in division (C) of this section, the alternative method of apportionment shall have first been approved by all of the following governmental units: the board of county commissioners; the legislative authority of the city, located wholly or partially in the county, with the greatest population; and a majority of the boards of township trustees and legislative authorities of municipal corporations, located wholly or partially in the county, excluding the legislative authority of the city, located wholly or partially in the county, with the greatest population. In granting or denying approval for an alternative method of apportionment, the board of county commissioners, boards of township trustees, and legislative authorities of municipal corporations shall act by motion. A motion to approve shall be passed upon a majority vote of the

members of a board of county commissioners, board of township trustees, or legislative authority of a municipal corporation, shall take effect immediately, and need not be published.

Any alternative method of apportionment adopted and approved under this division may be revised, amended, or repealed in the same manner as it may be adopted and approved. If an alternative method of apportionment adopted and approved under this division is repealed, the undivided local government revenue assistance fund of the county shall be apportioned among the subdivisions eligible to participate in the fund, commencing in the ensuing fiscal year, under the apportionment provided in section 5747.62 of the Revised Code, unless the repeal occurs by operation of division (C) of this section or a new method for apportionment of the fund is provided in the action of repeal.

(C) This division applies only in counties in which the city, located wholly or partially in the county, with the greatest population has a population of twenty thousand or less and a population that is less than fifteen per cent of the total population of the county. In such a county, the legislative authorities or boards of township trustees of two or more participating political subdivisions, which together have a population residing in the county that is a majority of the total population of the county, each may adopt a resolution to exclude the approval otherwise required of the legislative authority of the city, located wholly or partially in the county, with the greatest population. All of the resolutions to exclude that approval shall be adopted not later than the first Monday of August of the year preceding the calendar year in which distributions are to be made under an alternative method of apportionment.

A motion granting or denying approval of an alternative method of apportionment under this division shall be adopted by a majority vote of the members of the board of county commissioners and by a majority vote of a majority of the boards of township trustees and legislative authorities of the municipal corporations located wholly or partially in the county, other than the city, located wholly or partially in the county, with the greatest population, shall take effect immediately, and need not be published. The alternative method of apportionment shall be adopted and approved annually, not later than the first Monday of August of the year preceding the calendar year in which distributions are to be made under it. A motion granting approval of an alternative method of apportionment under this division repeals any existing alternative method of apportionment, effective with distributions to be made from the fund in the ensuing calendar year. An alternative method of apportionment under this division shall not be revised or amended after the first Monday of August of the year preceding the calendar year in which distributions are to be made under it.

(D) In determining an alternative method of apportionment authorized by this section, the county budget commission may include in the method any factor considered to be appropriate and reliable, in the sole discretion of the county budget commission, but the

commission shall give special consideration to the needs of villages incorporated after January 1, 1980.

(E) The limitations set forth in section 5747.62 of the Revised Code, stating the maximum amount that the county may receive from the undivided local government revenue assistance fund and the minimum amount the townships in counties having a population of less than one hundred thousand may receive from the fund, are applicable to any alternative method of apportionment authorized under this section.

(F) On the basis of any alternative method of apportionment adopted and approved as authorized by this section, as certified by the auditor to the county treasurer, the county treasurer shall make distribution of the money in the undivided local government revenue assistance fund to each subdivision eligible to participate in the fund, and the auditor, when the amount of those shares is in the custody of the treasurer in the amounts so computed to be due the respective subdivisions, shall at the same time certify to the tax commissioner the percentage share of the county as a subdivision. All money received by a subdivision from the county undivided local government revenue assistance fund shall be paid into the subdivision's general fund and used for its current operating expenses.

(G) The actions of the county budget commission taken pursuant to this section are final and may not be appealed to the board of tax appeals, except on the issues of abuse of discretion and failure to comply with the formula.

HISTORY: 143 v H 111 (EIT 7-1-89); 148 v H 185 (EIT 7-20-99); 149 v H 329. EIT 8-29-2002.

See provisions, §§ 3, 4 of HD 329 (149 v —) following RC § 5705.32.1.

Cross-References to Related Sections

Adopting tax budget for county undivided local government revenue assistance fund; exceptions, RC § 5705.28.1.
Determination of apportionment of fund; withholding pending compliance, RC § 5747.62.

CASE NOTES AND OAC

INDEX

Generally
Population

Generally

There are two methods of allocating undivided local government fund and undivided local government revenue assistance fund dollars to a county's political subdivisions: the statutory method specified in RC §§ 5747.51 and 5747.62 and any alternative method adopted pursuant to RC §§ 5747.53 and 5747.63. The statutory method requires a county budget commission to afford political subdivisions an "opportunity to be heard, under oath," before allocating ULGF and ILGRAF dollars because those statutes contemplate a needs-based allocation. The alternative method, however, does not require the budget commission to afford political subdivisions an opportunity to be heard under oath before allocating ULGF and ULGRAF dollars, because those statutes only require the county board of commissioners and

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BOARD OF TAX APPEALS
STATE OF OHIO

CASE NO. _____

CITY OF LORAIN
Ron L. Mantini, City Auditor
200 W. Erie Ave., 6th Fl.
Lorain, OH 44052-1647
440.204.2090 fax 440.204.2097

Appellant,

(BUDGET COMM. - LGF/RAF)

vs.

NOTICE OF APPEAL

**LORAIN COUNTY
BUDGET COMMISSION**
Mark R. Stewart, Secretary
226 Middle Ave.
Elyria, OH 44035
440.329.5207 fax 440.329.5223

and

Brownhelm Twp.
Marsha Doan Funk, Clerk 440.967.0626
1325 Highbridge Rd., Vermillion, OH 44089

Camden Twp.
Marilyn Ellingsworth, Clerk 440.774.7115
51257-Betts Rd., Wellington, OH 44090

Carlisle Twp.
Linda M. Lowery, Clerk 440.458.4491
39786 Calann Dr., Elyria, OH 44035

Columbia Twp.
Mary Lou Berger, Clerk 440.236.3891
27753 Ann Rd., Columbia Sta., OH 44028

Eaton Twp.
Linda Spitzer, Clerk 440.458.5888
12335 Grafton Rd., Grafton, OH 44044

Grafton Twp.
Mary Rose Dangelo, Clerk 440.926.2830
18789n Avon Belden Rd., Grafton, OH 44044

Henrietta Twp.
Francis J. Knoble, Clerk 440.965.4122
10413 Vermillion Rd., Oberlin, OH 44074

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LORAIN COUNTY
AUDITOR

Huntington Twp.

Margaret Harris, Clerk 440.647.4798
26309 St. Rt. 303 W., Wellington, OH 44090

LaGrange Twp.

Roberta M. Dove, Clerk 440.355.4738
237 Forest St., LaGrange, OH 44050

New Russia Twp.

Elaine R. King, Clerk 440.775.7782
44143 Russia Rd., Elyria, OH 44035

Pittsfield Twp.

James R. McConnell, Clerk 440.775.3352
17567 Hallauer Rd., Wellington, OH 44090

Sheffield Twp.

Angelo J. Marotta, Clerk 440.233.5602
4006 Elyria Ave., Lorain, OH 44055

Wellington Twp.

Bernie Nirode, Clerk 440.647.2113
44627 St. Rt. 18, Wellington, Oh 44090

Grafton Village

Linda S. Bales, Clerk 440.926.2401
960 Main St., Grafton, OH 44044

LaGrange Village

Rita K. Ruot, Clerk-Treasurer 440.355.5590
POB 597, LaGrange, OH 44050

Sheffield Village

Timothy J. Pelcic, Clerk-Treasurer 440.934.1452
4820 Detroit Rd., Elyria, OH 44035

S. Amherst Village

Janice J. Szmania, Clerk 440.986.6314
103 W. Main St., S. Amherst, OH 44001

Wellington Village

Karen J. Webb, Clerk 440.647.4626
Willard Memorial Square, Wellington, OH 44090

Amherst City

Diane L. Eswine, Auditor 440.988.2420
206 S. Main St., Amherst, OH 44001

Avon City
Robert Hamilton, Finance Dir., 440.937.7806
36080 Chester Rd., Avon, OH 44011

Oberlin City
Kelly E. Clark, Auditor 440.775.7210
85 S. Main St., Oberlin, OH 44074

Sheffield Lake City
Stanley Zaborski, Treasurer 440.949.8590
609 Harris Rd., Sheffield Lake, OH 44054

Appellees.

1. Appellant City of Lorain hereby appeals from the Lorain County Budget Commission's (LCBC) action of allocating the 2003 Undivided Local Government Fund (LGF) and Undivided Local Government Revenue Assistance Fund (RAF) pursuant to an unlawful alternate formula. This appeal is made pursuant to Ohio Revised Code Section 5705.37 and 5747.55.

2. Appellant received official notice of the above action of the LCBC on October 17, 2002 a true and correct copy of which is attached hereto and made a part hereof as "Exhibit A".

3. The fiscal officer of Appellant is authorized to file this appeal in accordance with a resolution adopted November 18, 2002 by the Lorain City Council, a certified copy of which is attached hereto and made a part hereof as "Exhibit B".

4. Appellant hereby pleads in the alternative concerning the errors it believes the LCBC made. See, *Springfield City Comm. v. Bethel Twp.* BTA Case No. 78-F-610 (1982).

(a) The LCBC erred by allocating the 2003 LGF and RAF using an alternate formula that includes an allocation and distribution to a statutorily ineligible entity.

(b) The LCBC abused its discretion when it included an allocation and to the county human services department.

(d) The LCBC erred by allocating the 2003 LGF and RAF using an invalid alternate formula which was not timely adopted and approved by the LCBC and the necessary political subdivisions as required by R.C. 5747.53(B) and 5747.63(B).

5. Appellant believes the LCBC should have allocated the LGF and RAF for 2003 according to the statutory method of distribution set forth in R.C. 5747.51 and 5747.62.

6. As a result of one or more of the errors described in paragraph 4, the LCBC has erroneously determined Appellant's allocation for the 2003 LGF and RAF, having made unlawful and excessive allocations to the Appellee subdivisions. "Exhibit C", attached hereto and made a part hereof, sets forth the name of the funds involved (LGF and RAF), the total amount of dollars allocated and the exact amount in dollars allocated to each subdivision from the 2003 LGF and RAF as erroneously determined by the LCBC. "Exhibit D" attached hereto and made a part hereof sets forth the amount in dollars which Appellant believes it should have received if the LCBC had allocated pursuant to the statutory method of distribution and the name of each participating subdivision that Appellant believes received more than its proper share of the 2003 LGF and RAF and the exact amount in dollars of each subdivision's overallocation.

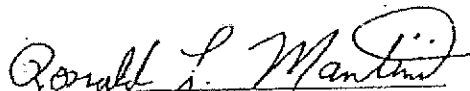
7. A copy of Appellant's tax budget is attached hereto and made a part hereof as "Exhibit E".

WHEREFORE, Appellant prays that the Board of Tax Appeals grant the following specific relief:

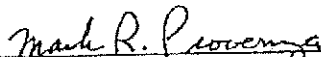
(a) That the Board find that the alternate formula used by the LCBC to allocate the LGF and RAF for distribution in 2003 is invalid; and

(b) That the Board allocate the 2003 LGF and RAF among the parties to this appeal pursuant to the statutory method of distribution.

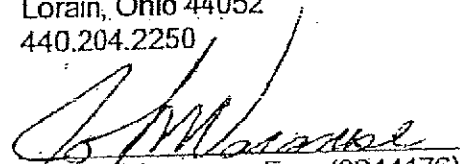
Respectfully submitted,



Ron L. Mantini, City Auditor
City of Lorain
Lorain County, Ohio



Mark Provenza, Esq. (0022490)
Lorain City Law Director
200 West Erie Ave., 7th Fl.
Lorain, Ohio 44052
440.204.2250

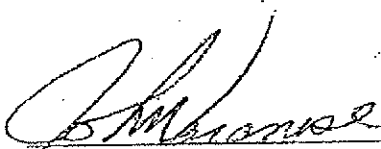


John R. Varanese, Esq. (0044176)
85 East Gay St., Ste. 1000
Columbus, Ohio 43215-3118
614.220.9440

Counsel of Record

CERTIFICATE OF FILING

The undersigned hereby certifies that a copy of the foregoing notice of appeal was filed with the Lorain County Budget Commission by certified U.S. mail this 18th day of November 2002.



John R. Varanese

P.3/7

TAX YEAR 2003 OFFICIAL TAX BUDGET CERTIFICATE OF ESTIMATED RESOURCES

The Budget Commission of Lorain County, Ohio hereby makes the following Official Certificate of Estimated Resources for the City of Lorain for the Budget Year beginning January 1st, 2003

FUND	UNENCUMBERED BALANCE January 1, 2003	REAL ESTATE TAXES	PERSONAL PROPERTY TAXES	LOCAL GOVERNMENT ALLOCATION	ROLLBACK HOMELEAD PROPERTY TAX EXEMPTION	OTHER SOURCES	TOTAL	ESTIMATED EXPENDITURES	OVER/UNDER REVENUE
Governmental Fund Type									
General Fund	(1,885,380.00)	1,867,193.00	619,611.00	5,489,840.17	279,000.00	18,287,800.00	22,921,931.17	\$24,277,000.00	(\$1,655,068.83)
Special Revenue Funds	3,000,000.00	397,508.00	90,852.00	-	88,000.00	43,551,820.00	17,112,178.00	\$12,707,426.00	\$4,404,752.00
Dedicated Funds	100,000.00	841,988.00	181,585.00	-	84,100.00	1,007,000.00	2,048,694.00	\$2,066,000.00	(\$17,406.00)
Capital Project Funds	2,766,000.00	-	-	-	-	2,800,000.00	10,483,000.00	\$7,575,000.00	\$2,908,000.00
Special Assesments	2,982.00	-	-	-	-	285,000.00	287,982.00	\$241,000.00	\$46,982.00
Proprietary Fund Type									
Enterprise Funds	10,800,000.00	-	-	-	-	18,000,000.00	28,800,000.00	\$24,000,000.00	\$4,800,000.00
Internal Service Funds	-	-	-	-	-	4,880,000.00	4,880,000.00	\$4,800,000.00	\$80,000.00
Fiduciary Fund Type									
Trust and Agency Funds	869,800.00	-	-	-	-	5,000,000.00	5,869,800.00	\$5,000,000.00	\$898,800.00
Agency	-	-	-	-	-	-	0.00	\$-	\$0.00
TOTAL	20,661,100.00	3,016,708.00	776,048.00	5,489,840.17	424,100.00	64,344,430.00	82,244,886.17	\$80,763,400.00	\$41,479,246.17

The Budget Commission further certifies its action on the foregoing budget and the County Auditor's estimate of the real estate taxes necessary to be levied within said budget is in accordance with the provisions of the Ohio Revised Code and the total amount approved for each fund governs the amount of appropriation from such fund.

DATE: 10-15-02

EXHIBIT "A"

BUDGET COMMISSION

BUDGET COMMISSION

BUDGET COMMISSION

BUDGET COMMISSION

BUDGET COMMISSION

BUDGET COMMISSION

EXHIBIT "B"

A RESOLUTION 52-02

AUTHORIZING AN APPEAL TO THE BOARD OF TAX APPEALS THE LORAIN COUNTY BUDGET COMMISSION'S ACTION OF APPROVING THE CITY'S OFFICIAL TAX BUDGET CERTIFICATE OF ESTIMATED RESOURCES FOR TAX YEAR 2003 CERTIFYING AN ERRONEOUS LOCAL GOVERNMENT ALLOCATION AND DECLARING AN EMERGENCY.

WHEREAS, the City has received its Official Tax Budget Certificate of Estimated Resources for Tax Year 2003; and

WHEREAS, the Lorain County Budget Commission has certified to the City an erroneous Local Government Fund and Local Government Revenue Assistance Fund allocation in its Official Tax Budget Certificate of Estimated Resources for Tax Year 2003; and

WHEREAS, R.C. 5705.37 authorizes the taxing authority of any subdivision that is dissatisfied with any action of the county budget commission to appeal, through its fiscal officer, to the board of tax appeals within thirty days after receipt by the subdivision of its official certificate of estimated resources; now, therefore,

BE IT RESOLVED by the Lorain City Council, Lorain County, Ohio:

Section 1. That the Lorain City Auditor be and hereby is authorized and directed to appeal to the Ohio Board of Tax Appeals, pursuant to R.C. 5705.37, the Lorain County Budget Commission's action of certifying an erroneous LGF and LGRAF allocation in its Official Tax Budget Certificate of Estimated Resources for Tax Year 2003.

Section 2. That the services of Ohio Governmental Financial Management, Inc. and Attorney John Varanese be used in the prosecution of the appeal and that Attorney Varanese be and hereby is authorized to take all necessary action to pursue said appeal to its conclusion.

Section 3. That this resolution is an emergency measure necessary for the preservation of the health, safety and welfare of the citizens of the City of Lorain in that a notice of appeal must be filed within thirty days of receipt of notice of the budget commission's action and shall become effective at the earliest time allowed by law.

ADOPTED: November 18, 2002

Kenneth E. Shaver
PRESIDENT OF COUNCIL

ATTEST: Nancy Greer Clerk

Arnie Hill
MAYOR

DATE: November 18, 2002

11-18-02
DATE

I, NANCY A. GREER, CLERK OF COUNCIL OF THE CITY OF LORAIN, OHIO, CERTIFY THE FOREGOING IS TRUE AND ACCURATE COPY OF RES. NO. 52-02

11/16/2002 08:35 614-290-0300

LORAIN COUNTY

County No. 47
August 28, 2002

REPORT ON DISTRIBUTION OF ESTIMATED UNDIVIDED LOCAL GOVERNMENT FUND & UNDIVIDED LOCAL GOVERNMENT REVENUE ASSISTANCE FUND FOR 2003

Report required by RC 5747.02(i) and RC 5747.51(j)

Please complete this form and attach and itemization of each estimated distribution to all subdivisions.
DUE DATE: SEPTEMBER 30, 2002

Date of Budget Commission apportion of estimated funds: August 12, 2002

Distribution reported is pursuant to (check appropriate method for each fund):

LOCAL GOVERNMENT FUND		LOCAL GOVERNMENT REVENUE ASSISTANCE FUND	
<input type="checkbox"/>	RC 5747.51 (Statutory Method)	<input type="checkbox"/>	RC 5747.02 (Statutory Method)
<input checked="" type="checkbox"/>	RC 5747.53 (Alternative Method)	<input checked="" type="checkbox"/>	RC 5747.03 (Alternative Method)

Name of person completing this form: Maggie Baria

Phone number: (440) 328-5205

SUMMARY FOR CLASSES OF SUBDIVISIONS

Breakdown	Local Government Fund		Local Government Revenue Assistance Fund	
	Dollar Amount	Percentage of Total	Dollar Amount	Percentage of Total
County Distribution	\$ 9,062,571.00	50.00%	\$ 1,275,113.50	49.05%
Total for all Cities	\$ 7,537,815.54	41.45%	\$ 1,057,095.75	41.18%
Total for all Villages	\$ 476,408.75	2.62%	\$ 86,810.17	2.60%
Total for all Townships	\$ 1,078,242.81	5.93%	\$ 151,209.56	5.89%
Total for all Park Districts			\$ 18,000.00	0.70%
Total Human Services*	\$ -	0.00%		
Grand Total	\$ 18,185,142.00	100.00%	\$ 2,538,231.00	100.00%

Please report distributions to any other type of entity.

DUE DATE: SEPTEMBER 30, 2002

Mail all completed forms to: Ohio Department of Taxation
Revenue Accounting
Tracey Corfios
P O Box 530
Columbus, OH 43266-0030

RECEIVED

SEP 03 2002

Department of Taxation of Ohio
Budget & Fiscal

EXHIBIT
" C "

**ITEMIZED REPORT ON DISTRIBUTION OF
ESTIMATED UNDIVIDED LOCAL GOVERNMENT FUND
FUND FOR 2003**
Report required by RC 5747.02(f)

<u>SUBDIVISION</u>	<u>AMOUNT</u>	<u>% GRAND TOTAL</u>
COUNTY	\$ 9,092,671.00	50.00%
AMHERST CITY	\$ 285,540.08	1.57%
AVON CITY	\$ 260,526.93	1.48%
AVON LAKE CITY	\$ 512,168.63	2.82%
ELYRIA CITY	\$ 1,926,483.80	10.59%
LORAIN CITY	\$ 3,057,995.80	16.82%
NORTH RIDGEVILLE CITY	\$ 622,573.62	3.42%
OBERLIN CITY	\$ 490,894.43	2.70%
SHEFFIELD LAKE CITY	\$ 278,858.82	1.53%
VERMILION CITY	\$ 95,092.00	0.52%
GRAFTON VILLAGE	\$ 87,749.41	0.48%
KIPTON VILLAGE	\$ 20,514.60	0.12%
LAGRANGE VILLAGE	\$ 43,876.19	0.24%
ROCHESTER VILLAGE	\$ 15,780.79	0.09%
SHEFFIELD VILLAGE	\$ 93,030.73	0.51%
SO. AMHERST VILLAGE	\$ 86,577.74	0.48%
WELLINGTON VILLAGE	\$ 127,879.29	0.70%
AMHERST TOWNSHIP	\$ 82,040.89	0.51%
BRIGHTON TOWNSHIP	\$ 23,116.06	0.13%
BROWHELM TOWNSHIP	\$ 36,578.95	0.20%
CAMDEN TOWNSHIP	\$ 39,729.45	0.22%
CARLISLE TOWNSHIP	\$ 125,706.45	0.69%
COLUMBIA TOWNSHIP	\$ 122,132.90	0.67%
EATON TOWNSHIP	\$ 110,548.39	0.61%
ELYRIA TOWNSHIP	\$ 69,846.93	0.33%

GRAFTON TOWNSHIP	\$	60,923.81	0.28%
HENRIETTA TOWNSHIP	\$	38,760.12	0.22%
HUNTINGTON TOWNSHIP	\$	37,178.71	0.20%
LAGRANGE TOWNSHIP	\$	69,818.19	0.38%
PENFIELD TOWNSHIP	\$	28,929.81	0.16%
PITTSFIELD TOWNSHIP	\$	43,760.65	0.24%
ROCHESTER TOWNSHIP	\$	21,867.99	0.12%
NEW RUSSIA TOWNSHIP	\$	66,454.44	0.31%
SHEFFIELD TOWNSHIP	\$	91,397.82	0.50%
WELLINGTON TOWNSHIP	\$	38,428.59	0.21%
HUMAN SERVICES	\$		0.00%

TOTAL \$ 18,785,142.07 100.00%

TOTAL FOR ALL CITIES \$ 7,837,919.64 41.45%

TOTAL FOR ALL VILLAGES \$ 475,408.75 2.52%

TOTAL FOR ALL TOWNSHIPS \$ 1,076,242.81 5.93%

**ITEMIZED REPORT ON DISTRIBUTION OF
ESTIMATED UNDIVIDED LOCAL GOVERNMENT REVENUE ASSISTANCE
FUND FOR 2003**
Report required by RC 5747.61(J)

<u>SUBDIVISION</u>	<u>AMOUNT</u>	<u>% GRAND TOTAL</u>
COUNTY	\$ 1,275,116.60	49.65%
AMHERST CITY	\$ 40,043.29	1.58%
AVON CITY	\$ 37,797.67	1.47%
AVON LAKE CITY	\$ 71,823.34	2.80%
ELYRIA CITY	\$ 270,024.17	10.51%
LORAIN CITY	\$ 428,844.37	16.70%
NORTH RIDGEVILLE CITY	\$ 87,307.80	3.40%
OSHERLIN CITY	\$ 88,841.60	2.68%
SHEFFIELD LAKE CITY	\$ 39,077.99	1.52%
VERMILION CITY	\$ 13,335.42	0.52%
GRAFTON VILLAGE	\$ 12,305.72	0.48%
KIPTON VILLAGE	\$ 2,833.00	0.11%
LAGRANGE VILLAGE	\$ 6,153.07	0.24%
ROCHESTER VILLAGE	\$ 2,213.06	0.09%
SHEFFIELD VILLAGE	\$ 13,130.50	0.51%
SO. AMHERST VILLAGE	\$ 12,141.41	0.47%
WELLINGTON VILLAGE	\$ 17,833.42	0.70%
AMHERST TOWNSHIP	\$ 12,907.52	0.50%
BRIGHTON TOWNSHIP	\$ 3,241.73	0.13%
BROWNHELM TOWNSHIP	\$ 5,129.54	0.20%
CAMDEN TOWNSHIP	\$ 6,571.54	0.22%
CARLISLE TOWNSHIP	\$ 17,626.70	0.69%
COLUMBIA TOWNSHIP	\$ 17,127.56	0.67%

EATON TOWNSHIP	\$	16,503.12	0.09%
ELYRIA TOWNSHIP	\$	9,392.62	0.33%
GRAFTON TOWNSHIP	\$	7,145.34	0.26%
HENRIETTA TOWNSHIP	\$	6,680.05	0.22%
HUNTINGTON TOWNSHIP	\$	6,213.41	0.20%
LAGRANGE TOWNSHIP	\$	8,388.31	0.33%
PENFIELD TOWNSHIP	\$	4,057.00	0.15%
PITTSFIELD TOWNSHIP	\$	6,136.86	0.24%
ROCHESTER TOWNSHIP	\$	3,066.70	0.12%
NEW RUSSIA TOWNSHIP	\$	7,917.01	0.31%
SHEFFIELD TOWNSHIP	\$	12,817.38	0.50%
WELLINGTON TOWNSHIP	\$	5,388.11	0.21%
METRO PARKS	\$	18,000.00	0.70%
TOTAL	\$	2,568,331.00	100.00%
TOTAL FOR ALL CITIES	\$	1,057,065.76	41.16%
TOTAL FOR ALL VILLAGES	\$	66,810.17	2.60%
TOTAL FOR ALL TOWNSHIPS	\$	151,209.38	5.88%

LORAIN COUNTY
2003 TAX BUDGET

CITY OR VILLAGE OF LORAIN CITY - RON MANTINI, AUDITOR

DATE: October 1, 2002

SIGNED: MAYOR

FUND NAME: GENERAL FUND

ESTIMATED UNENCUMBERED BALANCE JANUARY 1, 2003

ESTIMATED RECEIPTS

REVENUE

LOCAL TAXES

GENERAL PROPERTY TAX - REAL ESTATE

TANGIBLE PERSONAL PROPERTY TAX

MUNICIPAL INCOME TAX

OTHER LOCAL TAXES

TOTAL LOCAL TAXES

INTERGOVERNMENTAL REVENUES

STATE SHARED TAXES & PERMITS

LOCAL GOVERNMENT

ESTATE TAX

CIGARETTE TAX

LICENSE TAX

LIQUOR & BEER PERMITS

GASOLINE TAX

LIBRARY & LOCAL GOV'T SUPPORT FUND

PROPERTY TAX ALLOCATION

ROLLBACK & HOMESTEAD

OTHER STATE SHARED TAXES/PERMITS

TOTAL STATE SHARED TAXES & PERMITS

\$ 14,886,393.00

TOTAL OTHER SOURCES (OFFICE USE ONLY)

\$ 8,257,800.00

FEDERAL GRANTS OR AID

STATE GRANTS OR AID

OTHER GRANTS OR AID

TOTAL INTERGOVERNMENTAL REVENUES

SPECIAL ASSESSMENTS

CHARGES FOR SERVICES

FINES, LICENSES, AND PERMITS

MISCELLANEOUS

OTHER FINANCING SOURCES:

PROCEEDS FROM SALE OF DEBT

TRANSFERS

ADVANCES

OTHER SOURCES

TOTAL OTHER FINANCING SOURCES:

TOTAL REVENUE

\$ 97,000.00

\$

\$

\$ 4,781,800.00

\$ 20,000.00

\$ 208,000.00

\$ 1,475,000.00

\$ 845,000.00

\$

\$

\$

\$ 125,000.00

\$

\$ 125,000.00

\$ 24,839,800.00

EXHIBIT M

MUNICIPAL TRUST FUND
ESTIMATED UNENCUMBERED BALANCE
JANUARY 1, 2003

510,000



GENERAL PROPERTY TAX
REAL ESTATE
PERSONAL PROPERTY
ROLLBACK & HOMESTEAD
OTHER TRUST & AGENCY FUNDS

ESTIMATED RECEIPTS

1	-
2	-
3	-
4	5,000,000.00
5	-
6	-
7	-
8	-
9	-
10	-
11	-
12	-

TOTAL TRUST & AGENCY 5,000,000

TOTAL OTHER SOURCES (OFFICE USE ONLY) 5,000,000

PREPARED BY: LORAIN COUNTY AUDITOR
TAX SETTLEMENT DEPARTMENT

**Attached from copy
Hed was paid on
10/8/02 for Home Stamp
Dunsmuir, C. Phillips*

EXPENDITURES
GENERAL FUND
SPECIAL REVENUE FUND
DEBT SERVICE FUND
CAPITAL PROJECTS FUND
SPECIAL ASSESSMENTS FUND
ENTERPRISE FUND
INTERNAL SERVICE FUND
TRUST AND AGENCY

1	21,277,000.00
2	19,707,488.00
3	2,043,000.00
4	7,516,031.00
5	242,000.00
6	23,000,000.00
7	1,000,000.00
8	5,000,000.00

TOTAL EXPENDITURES

80,765,436.00

5,000,000.00



LORAIN COUNTY
AUDITOR

2002 OCT -8 P 3:51

RECEIVED

EXHIBIT D

Amount in dollars the City of Lorain believes it should have received · ULGF \$ 4,684,055
 Amount in dollars the City of Lorain believes it should have received RAF \$ 658,508

TOWNSHIPS RAF LGF
 Overallocation Overallocation

Brownhelm	\$ 4,147	\$ 29,364
Camden	\$ 4,574	\$ 32,387
Carlisle	\$ 16,225	\$ 114,889
Columbia	\$ 6,115	\$ 43,304
Eaton	\$ 14,171	\$ 100,345
Elyria	\$ 2,655	\$ 18,800
Grafton	\$ 6,091	\$ 43,129
Henrietta	\$ 4,582	\$ 32,446
Huntington	\$ 4,227	\$ 29,937
LaGrange	\$ 7,296	\$ 51,661
New Russia	\$ 6,840	\$ 48,437
Pittsfield	\$ 4,868	\$ 34,471
Sheffield	\$ 11,576	\$ 81,960
Wellington	\$ 4,396	\$ 30,936

VILLAGES

Grafton	\$ 10,273	\$ 72,742
LaGrange	\$ 2,205	\$ 15,630
Sheffield	\$ 9,625	\$ 68,154
S Amherst	\$ 10,113	\$ 71,608
Wellington	\$ 15,710	\$ 111,240

CITIES

Amherst	\$ 15,785	\$ 111,777
Avon	\$ 33,286	\$ 235,692
Oberlin	\$ 31,631	\$ 223,973
Sheffield Lake	\$ 3,273	\$ 23,178
	\$ 229,664	\$ 1,626,060

OHIO BOARD OF TAX APPEALS

City of Lorain,	)	CASE NO. 2002-T-1865
)	
Appellant,	)	(BUDGET COMMISSION: ULGF &
	)	ULGRAF)
vs.)	
	)	ORDER
Lorain County Budget)	
Commission, et al.,	)	(Denying Motion to Exclude)
)	
Appellees.)	

APPEARANCES:

For the Appellant -	John R. Varanese Attorney at Law 85 East Gay Street Suite 1000 Columbus, Ohio 43215-3118
For the Budget Commission -	Thompson Hine, L.L.P. John T. Sunderland 10 West Broad Street Suite 700 Columbus, Ohio 43215
For the City of Amherst -	Kenneth S. Stumphauzer Law Director Abraham Lieberman Assistant Law Director 5455 Detroit Road Sheffield Village, Ohio 44054
For the City of Oberlin -	Eric R. Severs Oberlin City Solicitor 5 South Main Street Oberlin, Ohio 44074
For Appellee Villages, Municipalities, and Townships -	Calfee, Halter & Griswold, L.L.P. Richard P. Goddard Ryan K. Callender 1400 McDonald Investment Center 800 Superior Avenue Cleveland, Ohio 44114-2688
For City of Sheffield Lake -	Stanley Zaborski, Treasurer 609 Haris Road Sheffield Lake, Ohio 44054
For Grafton Twp. -	Mary Rose Danngelo, Clerk 18789n Avon Belden Road Grafton, Ohio 44044

Entered: **MAY 9 2003**

The Board of Tax Appeals considers this matter pursuant to a motion filed by the city of Lorain, in which Lorain seeks to exclude the Lorain County Budget Commission as an appellee to this appeal. In its memorandum in support of the motion, Lorain represents that the commission is not a political subdivision entitled to participate in the distribution of the Undivided Local Government Fund (ULGF) or the Undivided Local Government Revenue Assistance Fund (ULGRAf), and, as such, cannot be a party hereto. Lorain originally named the commission as an appellee to this proceeding, and the commission has participated in this matter, including filing a motion to dismiss on jurisdictional grounds.¹

In support of its motion, Lorain relies upon R.C. 5747.55(D). The budget commission responds that R.C. 5747.55(D) does not exclude its participation and that the long history of commission participation in appeals to this board refutes Lorain's assertion that it cannot be a party.

R.C. 5747.55 sets forth certain requirements for making a valid appeal to this board from a commission's allocation of the ULGF and ULGRAf. R.C. 5747.55(D) provides:

"Only participating subdivisions named pursuant to division (C) of this section are to be considered as appellees before the board of tax appeals and no change

¹ Lorain seeks to strike the motion to dismiss through this action. However, even if we find that the commission is not a proper party, this would not serve to prohibit this board's review of the jurisdictional challenge previously raised by the commission. Although a party may not raise a jurisdictional issue, a tribunal may raise it, sua sponte, at any stage in the proceeding. *Fox v. Eaton Corp.* (1976), Ohio St.2d 236, reversed on other grounds, 61 Ohio St.3d 24. See, also, *Buckeye Foods v. Cuyahoga Cty. Bd. of Revision* (1997), 78 Ohio St.3d 459; *Jenkins v. Keller* (1966), 6 Ohio St.2d 122; *Davison v. Rini* (1996), 115 Ohio App.3d 688.

shall, in any amount, be made in the amount allocated to participating subdivisions not appellees.”²

Lorain points out that the commission is not defined as a “subdivision,” see R.C. 5705.01(A), and does not participate in local government funds in that it does not receive a share of them. Nevertheless, we do not find that R.C. 5747.55(D) precludes the commission’s participation as an appellee. Prior to the enactment of R.C. 5747.55(D), a subdivision appealing the allocation of a local government fund was required to designate each subdivision within the county as an appellee. Subsequent to the enactment of R.C. 5747.55, “only those subdivisions which the appealing party believes were allocated an excessive share of the fund need be named as parties.” *Berea City School Dist. v. Cuyahoga Cty. Budget Comm.* (1979), 60 Ohio St.2d 50, 54. The purpose of R.C. 5747.55(D) is two-fold; it not only protects a subdivision, the allocation of which is not challenged, from undergoing the expense of litigation but also ensures that its share of the local government fund will not be endangered by such an appeal.

R.C. 5747.55(D), however, is silent as to a budget commission’s right, or duty, to participate in an appeal filed by a subdivision. In this regard, we find *R.R.Z. Associates v. Cuyahoga Cty. Bd. of Revision* (1988), 38 Ohio St.3d 198, to be instructive. In *R.R.Z.*, the property owner argued that a county board of revision, as a deciding tribunal, could not be made a party to an appeal from that board of revision.

² R.C. 5747.55(C)(3), which must be read in pari materia with R.C. 5747.55(D), provides that the name of each subdivision that the appellant believes received more than its proper share of the allocation must be attached to the notice of appeal.

The property owner pointed out that R.C. 5717.01, which specifies who may appeal to this board from a BOR, does not specify that the BOR is to be made a party. The court disagreed:

"In American Steel & Wire Co. of New Jersey v. Bd. of Revision of Cuyahoga Cty. (1942), 139 Ohio St. 388, 389, 22 O.O. 445, 40 N.E. 2d 426, 427, this court addressed this question:

"The board of revision raises many questions. It first challenges the style of the case maintaining that there is no authority to make a deciding tribunal an adverse party in proceedings such as are involved here. It need only be said that no valid objection can be made to such a course. The proceeding is adversary and the parties appealing are denominated appellants and the adverse parties appellees. See Section 5611-2, General Code [now R.C. 5717.03]."

"While the board of revision is a deciding tribunal, it is not a truly impartial tribunal in the sense that a trial court or the BTA is. The board of revision is composed of the county auditor, who establishes the initial true value of property, the county treasurer, who collects taxes based upon the true value, and the president of the board of county commissioners, which operates the county government.

"R.C. 5701.01 states who may appeal a decision by the board of revision; it does not preclude a board of revision from being named an appellee. A board of revision, composed of three county officials who conduct the affairs of the county, has an interest in the case because the value decision affects the county's tax revenues.

"Therefore, a board of revision is appropriately named an appellee in these proceedings." Id. at 200.

Similarly, a budget commission is not an impartial tribunal. "The Budget Commission, composed of the county auditor, county treasurer, and the prosecuting

attorney (R.C. 5705.27), is a statutorily created administrative and ministerial body. Its function is generally to review the tax budget of the county and to certify for collection the appropriate taxes among the various subdivisions and other taxing units within the county. R.C. 5705.31. The Budget Commission is required by R.C. 5705.31 to examine each budget and determine the total amount of money to be raised in the county for purposes of each subdivision and other taxing units therein." *Pal v. Hamilton Cty. Budget Comm.* (1996), 74 Ohio St.3d 196, 198. The auditor and treasurer, as county officials, assess, levy, collect and redistribute taxes throughout the county. The county prosecutor represents the county and its officials.

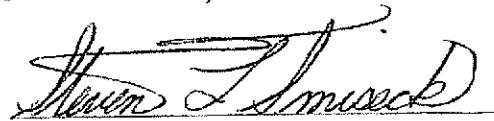
R.C. 5705.37 provides who may appeal an action of a budget commission, and R.C. 5747.55 provides what is required for such an appeal. Neither statute precludes a budget commission from being named as an appellee. The three members of the commission conduct the affairs of the county, and, as in the case of a BOR, a commission thus has an interest in the matter because our review affects the funds to be received by the county and other subdivisions.

Nor do we find Lorain's reliance upon *Lake Cty. Budget Comm. v. Willoughby Hills* (1967), 9 Ohio St.2d 108, to be availing. The budget commission had been an appellee in the matter before this board in an appeal in which we reduced the allocation to Lake County and increased the allocation to several of the other subdivisions. The budget commission then filed an appeal from this board to the Ohio Supreme Court, claiming that it was pursuing the appeal on behalf of Lake County. The court held that "to permit [the budget commission] to appeal from the decision of

the Board of Tax Appeals merely because that decision was different from the one rendered by the Budget Commission would be absurd as to allow a trial court an appeal to this court because the trial court's judgment had been reversed by the Court of Appeals." *Id.* at 110. While the court questioned whether the commission could file an appeal, it did hold that it had jurisdiction over the matter. *Id.* at 110 and paragraph one of the syllabus. Moreover, the court did not address the question of whether the commission could be named as an appellee, nor did it challenge the commission's status as an appellee in the preceding appeal before this board.³

Upon review of the foregoing, the Board of Tax Appeals concludes that the budget commission is appropriately named as an appellee to these proceedings. Lorain's motion, being without merit, is denied.

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



Steven L. Smiseck
Attorney Examiner

³ We would find that a similar restriction would apply to a BOR, if it were to seek an appeal from an order of this board finding the value of a parcel of real property. However, such does not invalidate a BOR's being named as an appellee. *R.R.Z.*, *supra*.

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**JEFFREY H. MANNING
PROSECUTING ATTORNEY**

LORAIN COUNTY, OHIO

225 MIDDLE AVENUE, 3rd FLOOR • ELYRIA, OHIO 44035
FAX: 440-329-5430 • E-MAIL: lcp@lcpProsecutor.org

July 17, 2003

The Honorable Craig Foltin
Mayor, City of Lorain
200 West Erie Avenue
7th Floor City Hall
Lorain, OH 44052

Re: Lorain City Local Government Fund Appeal

Dear Mayor Foltin:

It has been requested that this office document a proposal on behalf of Lorain County resolving the litigation concerning the distribution of local government funds and local government revenue assistance funds. It is my understanding that this proposal is the culmination of discussions between yourself and Jim Cordes which have been ongoing since late June.

The County's proposal is that Lorain City would receive a lump sum payment of \$500,000 in addition to the 2003 allocation determined from the percentages currently used by the Budget Commission. My understanding is that Lorain was allocated 16.815902761%. Even though the County is not named in the appeal, the County would be responsible for one-half or \$250,000 of the settlement; the remaining \$250,000 would be the responsibility of the entities named by Lorain in the appeal.

Resolution of the allocation for 2004 and thereafter would be based upon a new alternative formula. That formula would be based on the current percentage being used for Lorain increased to provide Lorain an additional \$640,000.00. The present figure for total local government funds allocated to all entities in Lorain County is \$18,843,936.00. My calculations indicate that 3.396% of this amount is \$640,110.00. It is therefore proposed that Lorain receive 20.212% of the 2004 allocation (16.82% + 3.396%). The County would propose to reduce its share of the distribution sufficiently to cover one half of the amount going to Lorain (assuming the MetroPark allocation would be eliminated, the County would receive 48.302% of the total local government funds). The remaining one-half would need to come from the other entities sharing in the distribution.

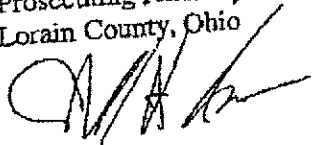
Mayor Craig Foltin
July 17, 2003
Page 2

The County would propose to then continue the allocation with these fixed percentages for a set period of time, perhaps five to ten years. We would need to work in percentages rather than fixed numbers since there is no way to predict what amounts will be made available by the state for local government funding. There should be some provision for a regular review of the formula, but the County would like a requirement that at least one year advanced notice be given prior to a change in the formula so that there is time allowed for all the entities to evaluate their positions.

In order for this proposal to be implemented, if the City of Lorain agrees with the same, the parties to the appeal will, of course, have to agree. In order to implement a new alternative formula, in addition to Lorain City and Lorain County agreeing, a majority of the remaining governmental entities in the county would have to agree. We would like to conclude an agreement as quickly as possible. In order for the budget commission to have any opportunity to complete its work, an agreement must be reached no later than September 1, 2003. This proposal will expire if not accepted by that time.

Very truly yours,

JEFFREY H. MANNING
Prosecuting Attorney
Lorain County, Ohio



Gerald A. Innes
Assistant Prosecuting Attorney
(440) 329-5398

GAI:cac

The City of Lorain, Ohio

Craig Foltin, Mayor

200 West Erie Avenue, 7th Floor
Lorain, Ohio 44052 • Phone (440) 204-2002 • Fax (440) 246-2276



PLAINTIFF'S
EXHIBIT
7

July 17, 2003

54

Lorain City Council
200 West Erie Avenue, 1st Floor
Lorain, Ohio 44052

Dear Members of Council:

GREAT NEWS! We have reached a settlement with the County regarding the under funding of our share of Local Government Funds. They have agreed to a lump sum payment of \$500,000 for 2003 and a percentage increase equal to \$640,000 for 2004 and every year thereafter.

Further adding to the good news, even though the County was not a party to the appeal, they have agreed to fund one half of that amount, thus easing the burden on the other local governments. This settlement is contingent upon the majority of the other local governments agreeing. In the meantime, we are still moving forward, full steam ahead, with the Tax Board of Appeals hearing on August 6, 2003. We will dismiss the case when both the new percentage is ratified and we receive the \$500,000 for 2003.

I apologize for not meeting the 72 hour deadline, but we just finalized this agreement. Please waive the 72 hour rule and pass at the July 21st meeting so the rest of the parties can proceed. As you can see, the deadline is September 1st, which is necessary due to State deadlines imposed on the Budget Commission.

Thank you.

Sincerely,

Craig Foltin, Mayor
City of Lorain, Ohio

CF:kd

RECEIVED
LORAIN COUNTY
COMMISSIONERS
JUL 17 A.D.
CLEAN

Received by Certified Mail # 7001 0320 0001 1038 10/6.

BUDGET COMMISSION of LORAIN COUNTY, OHIO



- DANIEL J. TALAREK
County Treasurer
- MARK R. STEWART
County Auditor
- JEFFREY H. MANNING
County Prosecutor

July 31, 2003

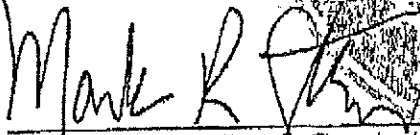
To: All Local Governments

Pursuant to Ohio Revised Code Section 5747.51 and 5747.62, the Lorain County Auditor is required to provide all subdivisions participating in local government fund and revenue assistance fund allocation a copy of the allocation. Enclosed herein is the 2004 distribution pursuant to the alternative formula, which has been in effect since 1984.

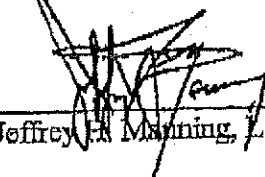
As you may be aware, the City of Lorain has filed a lawsuit challenging the validity of the formula and the Budget Commission is awaiting a ruling in the matter. There also is a proposed settlement involving a new alternative formula. Unfortunately, the law requires the Auditor to provide the enclosed notice at the time, before it is known whether either the old formula or a new formula will be used.

Since the old formula is presently the only one in existence, this notice is based upon that formula. However, this notice may become ineffective if either (1) the Board of Tax Appeals determines the old formula is invalid or (2) a new formula is adopted. This notice is being done to comply with law and is not meant to influence or deter the efforts to resolve the issues concerning the alternative formula through agreement of the subdivisions.

Sincerely yours,


 Mark R. Stewart, Lorain County Auditor
 Secretary, Lorain County Budget Commission


 Daniel J. Talarek, Lorain County Treasurer


 Jeffrey H. Manning, Lorain County Prosecutor

RECEIVED
 2003 AUG 1 PM 1 57
 CLERK OF COUNCIL
 CITY OF
 NORTH RIDGEVILLE OHIO

Council #
 cc: Mayor

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LORAIN COUNTY

Resolution accepting the alternative formula for distribution of Local Government and Local Government Revenue Assistance funds as proposed by the Lorain County Budget Commission and as practised in Section 5747.53 of the Ohio Revised Code.

The City of _____ Lorain County, Ohio met on the _____ day
of _____, 2003, with the following members present:

moved to adopt the following formula proposed by the

Lorain County Budget Commission for the calendar year

2004

to distribute Local Government and Local Government Revenue Assistance Funds:

Amherst City	1,570,163.72%	Ambert Township	0.508131240%
Avon City	1,482,127.192%	Brighton Township	0.127115111%
Avon Lake City	2,618,346.343%	Brownhelm Township	0.201144174%
Elyria City	10,588,224.150%	Cameron Township	0.218472028%
Lorain City	16,815,802.701%	Carlake Township	0.891259091%
North Ridgeville City	3,423,529.777%	Columbia Township	0.671688181%
Olmsted City	2,896,425.907%	Earl Township	0.607910487%
Sheffield Lake City	1,532,331.208%	Elyria Township	0.329092430%
Vermilion City	0.622910423%	Granton Township	0.280028894%
		Granton Township	0.21806679%
Granton Village	0.402533541%	Hennetta Township	0.204429013%
Kipton Village	0.118069300%	Huntington Township	0.328923410%
Lagrange Village	0.241274941%	Lagrange Township	0.169053762%
Rochester Village	0.086778478%	Parfield Township	0.240538588%
Sheffield Village	0.514074800%	Phisfield Township	0.120261955%
South Amherst Village	0.476090514%	Rochester Township	0.310442681%
Washington Village	0.703207516%	New Russia Township	0.502598125%
		Sheffield Township	0.211319422%
		Washington Township	
Lorain County	50.00%		
Metropolitan Park	\$18,000.00		

And the Clerk of Board/Council be directed to certify a copy of this resolution to the Lorain County Auditor

seconded the resolution, the roll being called, the following

vote resulted.

The above formula is **APPROVED** _____ day of _____, 2003
and adopted this

The above formula is **NOT APPROVED** _____ day of _____, 2003
this

Please return by September 1, 2003
to Lorain County Budget Commission

Clerk

Sheffield Village

OFFICE OF MAYOR



4340 Colorado Avenue Sheffield Village, OH 44054

Phone (440) 949-6325 Fax (440) 949-6341
E-mail: mayor@sheffieldvillage.com

Darlene Rae Ondercin
Mayor
Safety Director

47

August 4, 2003

Dear Government Official,

Enclosed you will find the new version of the proposed Alternative Formula for Lorain County. I would ask that you consider passing this within the next two (2) weeks.

Should you have any questions or concerns, please do not hesitate to call me. I can be reached at 440-949-6325.

Sincerely,

Mayor Darlene Rae Ondercin
Sheffield Village

ALTERNATIVE METHOD FOR APPROPRIATING
THE LORAIN COUNTY UNDIVIDED LOCAL GOVERNMENT FUND
PURSUANT TO SECTION 5747.63 OF THE OHIO REVISED CODE
AND THE LORAIN COUNTY REVENUE ASSISTANCE FUND
PURSUANT TO SECTION 5747.53 OF THE OHIO REVISED CODE

In lieu of the method of appropriating the Lorain County Undivided Local Government Fund and the Lorain County Revenue Assistance Fund (collectively, the "Funds") provided in Sections 5747.51 and 5747.61 of the Ohio Revised Code ("R.C."), pursuant to R.C. 5747.53 and R.C. 5747.63, this document proposes an alternative method for allocating the Funds (the "Alternative Method") among Lorain County (the "County"), the City of Lorain ("Lorain"), as the city with the greatest population in Lorain County, and the townships and municipal corporations, excluding Lorain (collectively, the "Remaining Political Subdivisions"), namely City of Amherst, Amherst Township, City of Avon, City of Avon Lake, Brighton Township, Brownhelm Township, Camden Township, Carlisle Township, Columbia Township, Eaton Township, City of Elyria, Elyria Township, Grafton Township, Village of Grafton, Henrietta Township, Huntington Township, Village of Kipton, LaGrange Township, Village of LaGrange, New Russia Township, City of North Ridgeville, City of Oberlin, Penfield Township, Pittsfield Township, Rochester Township, Village of Rochester, Sheffield Township, Village of Sheffield, City of Sheffield Lake, Village of South Amherst, City of Vermillion, Wellington Township, and Village of Wellington.

WHEREAS, Lorain has filed appeals with the Ohio Board of Tax Appeals contesting the action of the Lorain County Budget Commission (the "Budget Commission") allocating the Funds distributed or to be distributed in 2003 (the "2003 Funds");

WHEREAS, representatives of the County, Lorain, and the Remaining Political Subdivisions indicated a desire to avoid further litigation involving the allocation of the 2003 Funds; and

WHEREAS, the County, Lorain and a majority of the Remaining Political Subdivisions have indicated a desire to adopt an alternative formula for the allocation of the Funds pursuant to R.C. 5747.53 and R.C. 5747.63.

NOW, THEREFORE, representatives from the County, Lorain, and a majority of the Remaining Political Subdivisions hereby propose the following Alternative Method for allocating the Funds each calendar year pursuant to R.C. 5747.53 and R.C. 5747.63:

1. Allocation. As soon as possible after the adoption of this Alternative Method as provided in Section 6 and by no later than August 25 of each succeeding calendar year, the Budget Commission shall allocate the Funds each calendar year pursuant to this Alternative Method using the following formula.

- (a) The Budget Commission shall allocate:
 - (i) to the County 48.302% of the Funds plus \$250,000.00 for the 2004 calendar year allocation, and 48.302% of the Funds for each calendar year allocation thereafter,
 - (ii) to Lorain 20.212% of the Funds for each calendar year allocation, and
 - (iii) that percentage of the remaining Funds to each of the Remaining Political Subdivisions for each calendar year allocation as follows:

<u>Subdivision</u>	<u>New</u>
Amherst City	4.732%
Amherst Township	1.525%
Avon City	4.466%
Avon Lake City	8.487%
Brighton Township	0.383%
Brownhelm Township	0.606%
Camden Township	0.658%
Carlisle Township	2.083%
Columbia Township	2.024%
Eaton Township	1.832%
Elyria City	31.907%
Elyria Township	0.992%
Grafton Township	0.844%
Grafton Village	1.454%
Henrietta Township	0.659%
Huntington Township	0.616%
Kipton Village	0.347%
LaGrange Township	0.991%
LaGrange Village	0.727%
New Russia Township	0.936%
North Ridgeville City	10.316%
Oberlin City	8.135%
Penfield Township	0.479%
Pittsfield Township	0.725%
Rochester Township	0.362%
Rochester Village	0.262%
Sheffield Township	1.515%
Sheffield Village	1.552%
Sheffield Lake City	4.618%
South Amherst Village	1.435%
Vermillion City	1.576%
Wellington Township	0.637%
Wellington Village	2.119%
Lorain County Metropolitan Park District	0.000%

(b) In the event that the percentage of municipal population within the County should reach eighty-one percent (81%) or more of the total population of the County, the Budget Commission shall allocate:

(i) to the County 30.000% of the Funds as required by R.C.

5747.51(H),

(ii) to Lorain 27.412% of the Funds, and

(iii) that percentage of the remaining Funds to each of the Remaining

Political Subdivisions as set forth in Section 1.(a)(iii) herein.

2. Reporting. The Budget Commission shall submit to the County, Lorain, and each Remaining Political Subdivision a report which sets forth the following information:

(a) the total amount of the Funds allocated by the State of Ohio that year to Lorain County for allocation by the Budget Commission to the County, Lorain, and the Remaining Political Subdivisions;

(b) the amount of the Funds allocated by the Budget Commission to the County, to Lorain, and to each Remaining Political Subdivision, expressed both in dollar amounts and percentage of the total amount of the Funds allocated by the Budget Commission; and

(c) the total population of the County, Lorain, and each Remaining Political Subdivision as reported in the reports on population in Ohio by the Department of Development as of the twentieth day of July of the year the report is submitted, expressed in both raw numbers and percentage of population of the County.

Such report shall be submitted to the County, Lorain, and each Remaining Political Subdivision no later than August 25 of each year.

3. Duration. This Alternative Method shall apply to the allocation of the Funds for 2004 and for each calendar year thereafter until this Alternative Method is revised or terminated by the County, the city with the greatest population within the County, and a majority of the remaining political subdivisions within the County.

4. Changes in Legal Status of Eligible Political Subdivisions.

(a) In the event that a township entirely merges with a municipal corporation pursuant to R.C. Section 709.43, then that municipal corporation shall receive as its allocation of the Funds that percentage of the Funds allocated to that municipal corporation plus that percentage of the Funds allocated to the merged township as set forth in Section 1.(a)(iii) or Section 1.(b)(iii) herein, as applicable.

(b) In the event that an entire territory of a township is incorporated pursuant to R.C. Section 707.01 et. seq. to form a new municipal corporation, then the new municipal corporation shall receive that percentage of the Funds allocated to that township as set forth in Section 1.(a)(iii) or Section 1.(b)(iii) herein, as applicable.

(c) In the event that a portion of the territory of a township is incorporated pursuant to R.C. Section 707.01 et. seq. to form a new municipal corporation, then that percentage of the Funds previously allocated to that township as set forth in Section 1.(a)(iii) or Section 1.(b)(iii) herein, shall be allocated to the new municipal corporation and the remaining township as follows:

- (i) the new municipal corporation shall receive that percentage of the Funds previously allocated to the township equal to that percentage of the township's population located within the new municipal corporation; and
- (ii) the remaining township shall receive that percentage of the Funds previously allocated to the township equal to that percentage of the township's population located within the remaining township.

(d) In the event that a city becomes a village, or a village becomes a city, the new entity shall receive the former entity's allocation as set forth in Section 1.(a)(iii) or Section 1.(b)(iii) herein, as applicable.

5. Stipulation in an Appeal. This Alternative Method adopts a formula for the allocation of the 2004 Funds and beyond as set forth in Section 2 above. This document may be introduced into evidence at the Board of Tax Appeals without objection of any political subdivision that is a party to an appeal when it is claimed that the County, Lorain, or any of the Remaining Political Subdivisions has attempted to appeal pursuant to R.C. 5747.55 or when it is claimed that the Budget Commission has failed to make an allocation or distribution of the Funds in accordance with the terms of this Alternative Method.

6. Entire Proposal. This Alternative Method constitutes the complete proposal with respect to the matters addressed herein and supersedes all prior agreements and understandings. This Alternative Method may be amended or modified only pursuant to R.C. 5747.53 and R.C. 5747.63.

7. Adoption. Pursuant to R.C. 5747.53 and R.C. 5747.63, this Alternative Method shall become effective when approved by (i) the Board of Commissioners of the County (the "Commissioners"), (ii) the legislative authority of Lorain, and (iii) a majority of the boards of township trustees and legislative authorities of municipal corporations in Lorain County, Ohio excluding Lorain. In granting or denying such approval, the Commissioners, the boards of township trustees, and the legislative authorities of municipal corporations shall act by motion. A motion to approve shall be passed upon a majority vote of the members of the Commissioners, the board of township trustees, or the legislative authority of a municipal corporation, shall take effect immediately, and need not be published.

8. Governing Law. This Alternative Method shall be governed by and construed in accordance with the laws of the State of Ohio.

9. Successors. This Alternative Method shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and permitted assignees of the Budget Commission, the County, Lorain, and the Remaining Political Subdivisions.

10. Captions. The paragraph headings contained in this Alternative Method are for reference purposes only and shall not affect in any way the meaning or interpretation of this Alternative Method.

ORDINANCE NO. 133-03

AN ORDINANCE TO ENTER INTO A SETTLEMENT AGREEMENT WITH THE LORAIN COUNTY COMMISSIONERS AND COUNTY LOCAL GOVERNMENTS IN WHICH THE CITY OF LORAIN WILL RECEIVE A LUMP SUM SETTLEMENT OF \$500,000 FOR 2003 AND TO SUPPLEMENT THE ULGF AND ULGRAF PERCENTAGE OF DISTRIBUTION TO THE CITY OF LORAIN OF 16.82% IN 2004 AND BE INCREASED BY A PERCENTAGE AMOUNT EQUAL TO 3.396% FOR A TOTAL FIXED ALLOCATION PERCENT OF 20.212% OR A PERCENTAGE WHICH RESULTS IN A \$640,000 INCREASE TO THE CITY'S LOCAL GOVERNMENT FUND ALLOCATION. THE RESULTING TOTAL 2004 DISTRIBUTION PERCENTAGE BEING THE CITY'S FIXED PERCENTAGE DISTRIBUTION FOR 2005 AND THEREAFTER, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Lorain has been under funded of State money by the local government alternate formula, and this discrepancy must be corrected; and

WHEREAS, Mayor Foltin submitted legislation for the October 20, 2002 Council meeting and again at the November 18, 2002 Council meeting to appeal to the Ohio Department of Tax Appeals; and

WHEREAS, Lorain City Council approved this appeal on November 3, 2002; and

WHEREAS, the City of Lorain has filed two Notices of Appeal with the Ohio Board of Tax Appeals appealing the Lorain County Budget Commission's 2003 Undivided Local Government Fund (ULGF) and Undivided Local Government Revenue Assistance Fund (ULRAF) allocations to the City and the Commission's waiving the participating political subdivisions' adoption of tax budgets for fiscal year 2004; and

WHEREAS, each of the foregoing appeals alleges that the current alternate formulae used to allocate and distribute the ULGF and ULGRAF are unlawful and that the statutory method of distribution should be used to allocate and distribute the funds for 2003 and subsequent years pursuant to R.C. 5747.51 and 5747.62 unless and until alternate formulae are properly approved pursuant to R.C. 5747.53 and 5747.63; and

WHEREAS, the Lorain County Board of Commissioners and City of Lorain have agreed to a proposed a settlement of the foregoing appeals that involves a \$500,000 cash payment to the City in 2003 to supplement its 2003 ULGF and ULGRAF distributions and a fixed percentage of the total amount available for distribution in 2004 of 16.82% in 2004 and be increased by a percentage amount equal to \$640,000, which translates into a 3.396% increase for a total fixed allocation percent of 20.212% with the resulting total 2004 distribution percentage being the City's fixed percentage distribution for 2005 and thereafter; and

WHEREAS, the foregoing settlement proposal is contingent upon the approval of the ULGF and ULGRAF alternate formulae by the necessary parties and which incorporates the terms of said settlement proposal; and

WHEREAS, the Lorain County Board of Commissioners have asked that the City signify its acceptance of the foregoing settlement proposal by formal legislation.

Post-It Fax Note	7671	Date	6/14/04	Page 2
To	Leah Phillips	From	N. Greer Clerk	
Co. Dept.	Lorain	Co.	Lorain	
Phone #		Phone #	204-2050	
Fax #	330-1400	Fax #	246-2537	

NOW, THEREFORE, be it ordained by the City Council of the City of Lorain:

SECTION 1. The City of Lorain hereby accepts the Lorain County Board of Commissioner's settlement agreement of a \$500,000 cash payment to the City in 2003 to supplement its 2003 ULGF and ULGRAF distributions and a fixed percentage of the total amount of the ULGF and ULGRAF available for distribution of 16.82% in 2004 and be increased by a percentage amount equal to 3.396% for a total fixed allocation percent of 20.212% or a percentage which results in a \$640,000 increase to the City's local government fund allocation. The resulting total 2004 distribution percentage will be the City's fixed percentage distribution for 2005 and thereafter.

SECTION 2. The City of Lorain hereby approves ULGF and ULGRAF alternate formulae that include the terms set forth in Section 1 hereunder and which also provide that if additional ULGF or ULGRAF monies become available for distribution to the Lorain County municipalities and townships by operation of law, the City's distribution and the distribution of the remaining municipalities and townships taken as a whole shall be increased proportionately based on the City's distribution percentage and the distribution percentage of the remaining municipalities and townships taken as a whole.

SECTION 3. Upon receipt of the \$500,000 supplement, for its 2003 ULGF and ULGRAF distributions and approval of new alternate formulae by the Lorain County Board of Commissioners and a majority of the participating political subdivision which include the terms set forth in Section 1 and 2 hereunder, the City will dismiss its pending appeals at the Ohio Board of Tax Appeals.

SECTION 4. The formulae will be reviewed every 10 years, with the first review taking place in 2013 for year 2014. If any party wishes to review or attempt to change prior to 2013, it may, provided one year notice is given to all parties.

SECTION 5. The City's agreement to this new percentage shall expire at midnight, September 1, 2003, if not formally accepted by the required number of local governments.

SECTION 6. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal actions, were in meetings open to the public, in compliance with all legal requirements, including Ohio Revised Code §121.22.

SECTION 7. That this Ordinance is hereby declared to be an emergency, the nature of the emergency being the necessity and immediate need to provide funds for the purpose of meeting expenditures for the City in order to preserve the health, welfare, and safety of the citizens of the City of Lorain. Therefore, the Ordinance shall take effect and be in force from and immediately after its passage and approval of the Mayor, providing it meets the statutory requirements for passage.

PASSED: *[Signature]*, 2003

ATTEST: *[Signature]*, CLERK OF COUNCIL

APPROVED: *[Signature]*, 2003

[Signature]
PRESIDENT OF COUNCIL
[Signature]
MAYOR

ORDINANCE NO. 136-03

AN ORDINANCE APPROVING A NEW ALTERNATE FORMULA FOR DISTRIBUTING THE UNDIVIDED LOCAL GOVERNMENT FUND AND UNDIVIDED LOCAL GOVERNMENT REVENUE ASSISTANCE FUND IN LORAIN COUNTY FOR 2004 AND THEREAFTER, AND DECLARING AN EMERGENCY.

WHEREAS, Lorain City Council Ordinance No. 133-03 approved a settlement proposed by the Lorain County Board of Commissioners concerning the distribution of the Undivided Local Government Fund (ULGF) and Undivided Local Government Revenue Assistance Fund (ULGRAF) in Lorain County; and

WHEREAS, the terms of the settlement proposal increased the City's percentage distribution of the ULGF and ULGRAF from 16.82% to 20.212% of the total amount available for distribution within Lorain County for 2004 and thereafter representing an annual increase of \$640,000 to the City's general fund and also provided a supplement of \$500,000 to the City's 2003 ULGF and ULGRAF receipts; and

WHEREAS, the settlement was contingent upon the approval of a new alternate formula for distributing the ULGF and ULGRAF in 2004 and thereafter by Lorain County, the City of Lorain and a majority of the remaining Lorain County municipalities and townships; and

WHEREAS, a new alternate formula for distributing the ULGF and ULGRAF has been proposed which sets the City's distribution at 20.212% of the total amount available for distribution and which provides that the City's percentage distribution will increase proportionately (to 27.412%) to the percentage distribution increase of the remaining municipalities and townships taken as a whole should additional ULGF and ULGRAF moneys become available for distribution to the Lorain County municipalities and townships by operation of law.

NOW, THEREFORE, be it ordained by the City Council of the City of Lorain:

SECTION 1. The City of Lorain hereby approves the new alternate formula for distributing the ULGF and ULGRAF in Lorain County for 2004 and thereafter, a copy of which is attached hereto and incorporated herein by reference.

SECTION 2. The Lorain County Board of Commissioner's shall pay over to the City the agreed 2003 ULGF and ULGRAF supplement of \$500,000 immediately upon approval of the alternate formula by the required political subdivisions as set forth in the memorandum of understanding attached hereto and made a part hereof.

SECTION 3. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its

committees that resulted in such formal actions, were in meetings open to the public, in compliance with all legal requirements, including Ohio Revised Code §121.22.

SECTION 4. That this Ordinance is hereby declared to be an emergency measure, the nature of the emergency being the necessity and immediate need to provide funds for the purpose of meeting expenditures for the City in order to preserve the health, welfare and safety of the citizens of the City of Lorain. Therefore, this Ordinance shall take effect and be in force from and immediately after its passage and approval of the Mayor, providing it meets the statutory requirements for passage.

PASSED: Aug 19, 2003

Kenneth J. Stover
PRESIDENT OF COUNCIL

ATTEST: Nancy Green, CLERK OF COUNCIL

APPROVED: Aug 19, 2003

Craig Stein
MAYOR

573

August 28, 2003

The Board of Commissioners of Lorain County, Ohio met this day in a regular meeting, in the J. Grant Keys Administration Building, 226 Middle Avenue, Elyria, Ohio, with the following members present: Commissioner Mary Jo Vasi, President, Commissioner Betty Blair, Vice-President and Commissioner David J. Moore, Member and Theresa L. Upton, Acting Clerk.



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JOURNAL ENTRY

Commissioners said the Pledge of Allegiance.

The following business was transacted

APPOINTMENTS

- 10:00 a.m. Lorain Soil & Water Conservation District request funds for county ditch program
3:00 p.m. County Planning Commission - Public Hearing Room

COMMISSIONERS

RESOLUTION NO. 03-618

APPROVING LORAIN COUNTY JOB AND FAMILY SERVICES BILLS FOR PAYMENT

BE IT RESOLVED, by the Lorain County Board of Commissioners that we hereby approve the following Lorain County Job and Family Services Bills for payment, which have been signed by two or more Commissioners:

Table with columns: SCHEDULE, VOUCHER #, DESCRIPTION, AMOUNT. Lists various bills for Medicaid transportation, administrative expenses, payroll, etc.

Motion by Vasi, seconded by Blair to adopt Resolution. Ayes: All. Motion carried.

RESOLUTION NO. 03-619

In the matter of confirming investments as procured by the) August 28, 2003

BE IT RESOLVED, by the Lorain County Board of Commissioners that we hereby confirm investments as procured by the Lorain County Treasurer:

Table with columns: DATE, DESCRIPTION, AMOUNT, INTEREST EARNED, DUES, etc. Lists financial transactions.

Motion by Blair, seconded by Vasi to adopt Resolution. Ayes: All. Motion carried.

RESOLUTION NO. 03-620

In the matter of authorizing various appropriations) August 28, 2003

BE IT RESOLVED, by the Lorain County Board of Commissioners that we hereby authorize various appropriations.

- \$200,000.00 to be appropriated to: additional monies for future renovations to administration building/capital improvements
\$200,000.00 to 00101-2001-440401
\$ 10,000.00 to be appropriated to: supplies acct as outlined in Mr. Phil Betleski letter rec'd 8/21/03/recorder
\$ 10,000.00 to 00101-2401-430101
667.97 to be appropriated to: manufacture home settlement/auditors
667.97 to 00101-0301-494030
29.98 to be appropriated to: manufacture home settlement/911
\$ 29.98 to 27201-5201-494030

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RESOLUTION NO. 03-627

BX

A Resolution Adopting and Approving Alternative Method For Appropriating The Lorain County Undivided Local Government Fund Pursuant to Section 5747.53 of the Ohio Revised Code and the Lorain County Revenue Assistance Fund Pursuant to Section 5747.63 of the Ohio Revised Code August 28, 2003

WHEREAS, the legislative authorities for the City of Lorain, the municipality with the largest population located wholly or partially in Lorain County, and a majority of the remaining political subdivisions in Lorain County have approved and adopted by resolution an alternative method for appropriating the Lorain County Undivided Local government Fund and the Lorain County Revenue Assistance Fund pursuant to Sections 5747.53 and 5747.63; and

WHEREAS, those legislative authorities have submitted said alternative method to the Board of Commissioners of Lorain County for approval;

THEREFORE, BE IT RESOLVED by the Board of Commissioners of Lorain county, Ohio that this board hereby adopts and approves the Alternative Method attached hereto as Exhibit A, for allocation of the Lorain County Undivided Local Government Fund and the Lorain County Revenue Assistance Fund pursuant to Revised Code Sections 5747.53 and 5747.63 for the years 2004 through 2010.

Motion by Moore, seconded by Blair to adopt Resolution. Ayes: All. Motion carried. (discussion was held on the above)

JOURNAL ENTRY Lorain Soil & Water Conservation District

Bob Ternes, Chair, Lorain Soil & Water Conservation District said a letter was sent to the Commissioners in July 2003 stating the balance of the fund for the ditch program will be expired. The Board gave to the District \$500,000 for this program and monies are beginning to dry up with completing 19 projects. It will take \$100,000 annual to keep this project going and the account is \$25,000 short for the operating expenses for year 2003. He also received an indirect cost billing of \$7,300.00 Mr. Cordes said this year all agencies received indirect costs bills, should have received in past years also. Mr. Ternes would like the County to commit minimally \$100,000 annually for the ditch program (but still need staffing for engineers, etc in order to design these plans, etc) and also like \$25,000 for the shortfall in their budget this year. He also stated the State will match funds on any administrative fees they receive from the county. There are also \$400,000 in requests now to finish these ditches. The Board would like the ditch program to continue but the budget discussion will be coming up and this will be discussed. Discussion continued and the following resolution was adopted:

RESOLUTION NO. 03-628

In the matter of allocating \$25,000.00 to the Lorain Soil and Water Conservation District for year 2003 August 28, 2003

BE IT RESOLVED, by the Lorain County Board of Commissioners that we hereby allocate \$25,000.00 to the Lorain Soil and Water Conservation District for year 2003.

Such monies will be appropriated from the un-appropriated funds in the county general fund and paid from the allocation account as soon as possible.

FURTHER BE IT RESOLVED, these funds will be used for administrative needs until December 31, 2003.

Motion by Moore, seconded by Blair to adopt Resolution. Ayes: All. Motion carried. (discussion was held on the above)

JOURNAL ENTRY

Commissioners took a break at 11:31 a.m. Commissioners reconvened at 11:50 a.m.

RESOLUTION NO. 03-629

BX

In the matter of approving the Standard Operating Procedures for the Lorain County Dog Pound August 28, 2003

BE IT RESOLVED, by the Lorain County Board of Commissioners that we hereby approve the Standard Operating Procedures for the Lorain County Dog Pound.

Said Procedures are located in the Dog Wardens Office and County Administrators/Personnel Office.

Motion by Moore, seconded by Blair to adopt Resolution. Ayes: All. Motion carried. (discussion was held on the above)

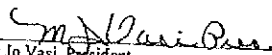
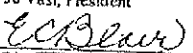

JOURNAL ENTRY

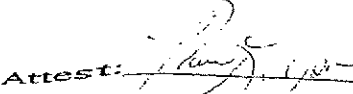
August 28, 2003

077

With no further business before the Board, Motion by Moore, seconded by Vasi to adjourn at 1:40 p.m. Ayes: All.
Motion carried.

The meeting then adjourned.

	)	Commissioners
Mary Jo Vasi, President)	
	)	of
Betty Blair, Vice-president)	
	)	Lorain County
David J. Moore, Member	)	Ohio

Attest:  Acting Clerk

Please note that the Commissioners' meetings are open to the public. The scheduled air times for the meetings have changed and will be shown on Saturday at 12:00 Noon and Monday at 11:00 p.m., subject to change at the discretion of the Lorain County Community College. The meetings might be also broadcasted in additional time periods as scheduling permits. If anyone wants to purchase a copy of the Commissioners Meeting Tapes, please call Lorain County Records Center at 440-326-4866.

APPELLANT'S EXHIBIT 118

B.12

JOURNAL ENTRY

In the matter of approving the allocations of various)
municipalities' settlement for the Local Government)
Funds) August 28, 2003

Mr. Innes, Assistant County Prosecutor said the county has received a proposed alternate formula for the local government fund distributions from Attorney Richard Goodard and Ryan Calfee, Calfee, Halter & Griswold. About a month ago, a proposal was submitted in which the county would pay \$250,000 for the 2003 allocations and also proposed to take an increase the City of Lorain receives in the future, with numbers calculated under the current figures that would allow \$640,000 increase and this would depend on the allocation each year, but does increase their percentages. Send this information to the attorneys representing the litigants in the current lawsuit and asked for a proposal that fits within the parameters. A new proposal was submitted and 17 of the other township, municipalities and village other than Lorain and the county. There are three entities: County, Lorain and majority of all other entities. This proposal asked for approval with the formula and the change in there is Lorain County fronting the entire \$500,000 to the City of Lorain settling 2003 suit and then repaid from the 2004 distribution. He said this repayment should be divided between the litigations to the lawsuit, but this proposal divides it up between all if they were in the lawsuit or not. Another change is up to a 10-year time limit or when the census is done, new proposal is a permanent formula and there is no allocation to the Metro Parks. Also have not seen the City of Lorain resolution. If this is changed then Mr. Cordes said the original agreement was a proposal and then it was developed and approved by the other litigants and Board needs to vote on the funding but there is not automatic sunset or renewal cost and if this is not approved by September 1, it will got to the statutory formula.

Mr. Innes said once approved this would go to the Budget Commission, they meet September 8 and then need to approve, and October 1 is the absolute deadline. Commissioner Moore was concerned with the time limit being permanent, should be 5-10 years. Mr. Innes said he has conflicts and suggested various alternatives and he did not suggest this proposal.

Mr. Cordes said there are provisions in the ORC and the City of Lorain is not in agreeance with a date for review, Commissioner Blair said this would guarantee an allotment each year to the City of Lorain and they also have veto power, as well as the county and majority entities.

Commissioner Vasi said she is uncomfortable with the dates and the Board is agreeable to a date.

Commissioner Moore said not vote today, change wording from permanent to a date. Mr. Innes said there is a risk if the other two are not agreeable to the change and the state formula takes effect. He said it is questionable because numbers are needed to be analyzed to see who wins and loses. Some have said County would not suffer big loses but Township would lose and estimate is that the Park Board does not have any needed but would not receive anything, but something should be given to the Metro Parks even if it is \$100 rather than eliminated.

Mr. Cordes said any modification to this agreement it has to be approved by the others no matter what, you may run out of time.

Commissioner Blair said the county made a good faith effort to resolve this issue, with the proposal and it gave starting grounds to this issue, rather than going down the path with further discussion. Not every one will be happy.

Journal entry cont.

Page 2

August 28, 2003

Law Director Terry Schilling, City of Elyria, 328 Broad Street, Elyria, Ohio commended on the deadline. He said there is a proposed settlement of an existing case, and there is no specific deadline unless the Board of Tax Appeals has specifically said this case needs to be settled. This is an appeal to the 2003 allocation and if the tax appeal rules, they would have an order to the Budget Commission and this is what needs to be done and don't agree with deadlines. He went on the record that the City of Elyria passed the following Ordinance No. 2003-135, in which they clearly state they do not approve and adopt this settlement. The City of Elyria, North Ridgeville and Avon Lake and about 3-4 other townships are not litigants and don't have a vote, but the ORC does give rights to them stating money can not be taken away if they are not litigants. The \$250,000 is not a repayment it is a keep of the following year allocation. City of Elyria is not a party to this lawsuit but under this proposal \$80,000 is expected to be paid from the City as part of the settlement and they have no part in this suit. This formula has been in place since 1983 and the City of Lorain needed money so they appealed this formula. When do other entities have a right. He gave the Ordinance to the Clerk, which reads as follows:

RESOLUTION NO. 2003-05

- Approved by:
- Mayor: _____
- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____
- 7. _____

WHEREAS, the City of Lorain, Ohio (Lorain) filed a tax appeal with the State of Ohio Board of Tax Appeals (Case No. 02-1-1043) against the Lorain County Budget Commission challenging Lorain's allocation of 2003-2004 Local Government Funds and Estimated Local Government Revenue Available Funds received from the State of Ohio for 2003 and for 2004 and future years collectively referred to as the Funds, in which various municipalities, villages and townships within Lorain County were named as additional parties; and

WHEREAS, the Cities of Elgin, North Edgewood and Avery Lake, were named as parties opposite to Case No. 02-1-1043; and

WHEREAS, Lorain has tentatively agreed with the Lorain County Budget Commission to a settlement of the tax appeal proceeding and would receive the sum of \$200,000 to Lorain from the 2003 Funds and would contribute the approximate sum of \$440,000 to Lorain from the Funds in 2004 and future years; and

WHEREAS, the settlement proposed is based on the adoption of an Alternative Method for apportioning and allocating the proceeds of the Funds for 2003 and for 2004 and future years which would reduce the amount of the Funds available to Elgin as a consequence of the settlement; and

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL.

 City Clerk

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ELGIN, STATE OF OHIO:

SECTION 1. That the City of Elgin hereby does not approve nor does it adopt the proposed Settlement and Alternative Method for apportioning the Funds for 2003, 2004 and future years because said proposed settlement and alternative method would reduce the City of

City's ability to pay the bonds as a result of the payment of the tax appeal proceeding Ohio Rev. Code § 5705.10 which the City of Lima is not a normal taxpayer, in violation of the provisions of C.R.C. Section 5707.02 and Ohio law.

SECTION 2: The Law Director is hereby authorized to pursue any appropriate legal remedies to protect the City's rights and interests in the Bonds for 2003, 2004 and future years in the event such action becomes necessary.

SECTION 3: That it is found and determined that all formal notices of this Council representing and relating to the passage of this Ordinance were given in accordance with the public, in compliance with Ohio law.

SECTION 4: That this Ordinance to said bonds is declared to be an emergency measure, the emergency being that the time approval of the proposed ordinance and alternative special needs to be adopted by the City of Lima on or before September 17, 2003 and City Council will not have any further council meetings prior to that date and for the legislative preservation of the public peace, health, safety or welfare of the people of the City of Lima, therefore, this Ordinance shall be in full force and effect from and immediately after its passage and approval.

PASSED: 5/16/03
E. Kenneth Hubbard, President

ATTEST: [Signature]
John J. Walsh, Clerk

[Signature]
William M. Erso, Mayor

DATE: 5-20-03

Approved by the Mayor
Deanna Hill
 City of North Ridgeville, Ohio

CERTIFICATE OF PUBLICATION

I, THE UNDERSIGNED CLERK OF COUNCIL OF THE CITY OF NORTHRIDGEVILLE, OHIO, HEREBY CERTIFY THAT THE FULL TEXT OF THE PROPOSED ORDINANCE NO. 2003-1215 WAS POSTED IN PUBLIC PLACES WITHIN THE CITY AS DETERMINED BY COUNCIL, AND THAT SAID PLACES WERE AS FOLLOWS: CITY HALL, CENTRAL FIRE STATION AND THE POLICE STATION.

DATED: 8/20/03
Deanna Hill
 CLERK OF COUNCIL
 CITY OF NORTHRIDGEVILLE, OHIO

This Ordinance is for Mayor: 8/20/03

Mayor Deanna Hill, City of North Ridgeville said she also would submit an Ordinance that does not approve this proposed settlement. The City of North Ridgeville currently in 2003 receives over 3.4% and in 2004 it would be reduced to 3.11%, this repayment of \$250,000 from cities that are not named would impact the City in the amount of \$58,200 in the first year, thereafter it would be \$32,500 each year less. It goes from 3.42%, to 3.11% and then 3.25%. As Mayor of the City of North Ridgeville she has a responsibility and duty to the residents to protect our financial resources. This deals with a suit in 2003 and they were not named in suit, as is this legal, we don't believe this is. This legislation that set up this formula and has been in use for 19 years without review, which was to be done every year and there has been no review of the as to the appropriation and percent was this legislation approving the formula 19 years ago was it every adopted. The City of North Ridgeville passed an emergency measure ordinance authorizing the Mayor to pursue any legal matters to protect the city rights and interest in such funds as necessary and this Ordinance No. 3943-2003 and reads as follows and they will proceed:

Haye

DATE: _____	APPROVED: _____	1 ST READING: _____	APPROVED: _____
INTRODUCED: _____	BY: _____	2 ND READING: _____	APPROVED: _____
REFERRED TO: _____	BY: _____	3 RD READING: _____	APPROVED: _____
RESOLUTION NO. _____	BY: _____	ADOPTED: _____	APPROVED: _____
		EMERGENCY: _____	APPROVED: _____

ORDINANCE NO. 199-2002

AN ORDINANCE REJECTING A PROPOSAL FOR AN ALTERNATIVE METHOD OF FUNDING LOCAL GOVERNMENT FUNDS AND LOCAL GOVERNMENT REVENUE ASSISTANCE FUND PURSUANT TO REVENUE STATE ASSISTANCE ON THE REVENUE CODE THAT WOULD REDUCE THE CITY'S ALLOCATION AS THE RESULT OF THE SETTLEMENT OF A TAX APPEAL IN WHICH THE CITY IS NOT A PARTY, CONTRARY TO THE CITY'S RIGHTS UNDER SECTION 347.01 OF THE REVENUE CODE, AND AUTHORIZING THE BOARD TO FURNISH ANY LEGAL ASSISTANCE TO PROTECT THE CITY'S RIGHTS AND INTERESTS IN SUCH FUND IF NECESSARY AND DECLARING AN EMERGENCY.

WHEREAS, the City of Lewis, Ohio ("Lewis") did enter into an agreement with the State Board of Tax Appeals and the Lucas County Board of Commissioners (collectively "Board") to allocate of certain Local Government Funds and the Local Government Revenue Assistance Funds received from the State of Ohio for 2002 and for 2003 and future years (collectively referred to as the "Funds") in which various municipalities, villages and townships within Lucas County were named as additional parties; and

WHEREAS, the City of North Ridgeville ("City"), along with the City of Elyria and the City of Avon Lake, were not named as additional parties to the agreement; and

WHEREAS, Lewis has tentatively agreed with the Lucas County Board of Commissioners to a settlement of the tax appeal pending that would result in the sum of \$2,987,500 to Lewis from the 2002 Funds and would result in the sum of \$440,000 to Lewis from the Funds in 2003 and future years; and

WHEREAS, the ordinance proposed is based on the adoption of an Alternative Method for apportioning and allocating the proceeds of the Funds for 2002 and for 2003 and future years which would reduce the amount of the Funds available to the City as a consequence of the settlement; and

WHEREAS, the proposed settlement and ordinance proposed violate the provisions of Section 347.01(B) of the Revised Code that no change may be made in the amount allocated to the City as a result of the tax appeal since the City was not named in the appeal.

Other items were, the proposed alternative method makes not allowance for scheduled reviews for future applicability of the agreement. The demographics of townships will change and Lorain County is on the verge of good growth. With this thing not changing, not counting for the change in demographics, there is not entice, whatsoever to make any change in the allocation, you have to question the fairness and equity of when you are talking about taxpayers dollars and yet, when demographics change there is not return of the taxpayers dollars from the government that the services were needed. Proposed alternative method commits Amherst Townships' current and future leaders, all subdivisions, and residents and property owners that this agreement goes on forever, this is irresponsibility, and you have to have reviews. Is this lawful, that you put all these communities in a binding agreement that cannot be changed? All communities other than the City of Lorain and County everyone needs to lobby the other majority communities to make a change. The proposed method assumes the original portion was fair and applicable and only one person that will tell him and this is good would be God, looking at attorney's they are not God.

He said the other concern was this proposal was drafted under extreme distress, by the City of Lorain with immediate need and problem, under stand the strategy they choose but because there is distress we need not to run away with this. This is not a good formula for any community in Lorain County and we need a formula with biding arbitration in the future, something that has change for demographics, and perhaps set attorney's aside all that are not from Lorain County and bring the real leaders together and craft something better for Lorain County. Has this agreement been compared to other counties in the State of Ohio, in order to learn and improve what the county has.

Mayor Hill, City of North Ridgeville said her understanding that why other communities were not named in the lawsuit was because based on the formula currently in use, which is determined by population and roads, the communities not named as litigants these communities have not been overpaid, but rather than underpaid. Not only did they not receive the funds do to them by population and roads, but this proposal ask that they pay again, even though they have not received what was entitled to them.

Law Director Shilling said the dollar amount for the City of Elyria with the formula based on 2003 it would decrease of \$100,000 could be a substantial amount of money each year.

County Administrator Cordes said the formula on the third vote was deceived upon people (Sheffield Village, Attorney Goodard - joining of forces) and this law firm drafted this agreement and submitted to the various entities that have signed off on.

Law Director Shilling said he disagrees, whoever represented one party and the City of Lorain how this city could receive more and take the rest and allocate it to the other parties, with this formula. City of Lorain is going from 16 points up to 20 points and other than Lorain County money coming up front is coming down. Mr. Cordes said Lorain City will increase but Lorain County is also an unnamed litigant and ½ is being paid from the county. County will pay \$250,000 and the counties loose will b \$320,000 and the settlement was \$1.6 million and then

Journal entry cont.

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negotiated to \$500,000 and in subsequent years they were seeking \$1.8 million in allocation funds. Mr. Shilling commended Mr. Cordes for negotiating this.

Commissioner Vasi said if the formula is to be population and road, why is the Auditor's Office not deciding the formula. Mr. Imes said there is a lawsuit filed questioning the adoption of the formula, the Auditor can not adopt a formula, only the entities can.

Mr. Cordes said there are 21 communities in agreeance to this formula
Commissioner Vasi moved to hold. No second, therefore the motion died.

Commissioner Moore read an email from Mayor Berner, Avon Lake as follows:

"Dear Commissioners, he is really concerned for the taxpayers of Avon Lake with respect to the proposed alternative formula for distribution of Lorain county and undivided local government funds. It is his understanding the Board of Commissioners will adopt a proposed formula presented as a settlement for the City of Lorain. As the Mayor of Avon Lake, he cannot recommend to our Council settlements of this formula. The City of Avon Lake takes issues with the allocation section of the proposal and distributes the county 40.208% of the funds plus \$250,000 for the 2004 calendar year allocation. He believes the \$250,000 should come out of the 48.302%; it not applicable for the City of Avon Lake distribution percentage to come from the balance of the remaining funds after the \$250,000 is taken out. These funds are being distributed to the City of Lorain as a result of them not receiving the statutory distributions over the past years. He will argue, Avon Lake has also received less money for the past years. If the statutory formula were used, Avon Lake would be in the same situation as Lorain and would have received more of the distribution of local government funds. Avon Lake should not be required to pay any funds to Lorain and hope the Board of Commissioners will take this in to consideration when choosing to adopt the alternative formula.
Sincerely, Mayor Robert Berner, Avon Lake"

Commissioner Moore said he does not like the word permanent and will not support this agreement.

Commissioner Blair said all this money is all part of Lorain County and monies are generated by the sales tax to the state, which is redistributed back to the county. Local government distribution has had a long history in Lorain County; the reason why an alternative formula was in place, and adopted in 1980's is because the City of North Ridgeville filled a suit with the State Board of Tax Appeals claiming they were not fairly represented in distribution. At this time, a committee was formed and after a year an alternative formula was adopted and Commissioner Blair was on this committee and voted against this formula and did not think enough was going to one aspect of the political subdivision as opposed to the other. It was adopted, in her mind it was with the three entities. When talking about the distribution of the state, and during the budget preparation from the state, local government funds were going to be cut forever and 2) how the state distributes the monies, they take 10% off the top and this % is given to any city or village that has an income tax, townships don't have ability to collect taxes and the rest goes on the formula. She is not particularly happy with this formula and believes there should be a sunset established. How should this formula be adopted, maybe the legislation should have more equity when discussion take place. The agreement of the County,

Journal entry cont.

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City of Lorain and majority of the political subdivisions need to agree. She does not favor paying any more lawyer fees for someone to figure out a formula when the county could have done this. About four years ago, then Mayor of Elyria and Lorain came to her office stating the formula would change with the census of 2000 and they wanted to trade, giving the county the airport contribution that for the past 30 years was paid by the City of Lorain, Elyria and County by 3rds. So the county has had the airport since this time and sometimes we are a big family and sometimes entities give more than others but the county has been generous in giving all entities fair share in all aspects. In view of the deadline, the budget commission needs to certify

Blair moved to approve Lorain County's 1/3 for distribution of funds on a formula rather than statutory.

Mr. Innes said there is a Supreme Court case that all entities agree to the formula and one entity only agrees to number of years, but this case has gone back several times.

Blair amended her motion to include for 10 years.

Vasi said she would like to hold for changes.

Moore would second Blair motions if an amendment for county to pick up the \$500,000.

All above motions died due to a lack of a second.

Discussion continued and the following resolution was adopted as follows:

Mark Stewart, Lorain County Auditor said the County Commissioners have veto powers and can you disallow the current or future formulas. If the formula were not in agreeance in few years, then the Budget Commission would have to look at an ad hoc committee to look at an alternative formula. Mr. Innes said yes there is veto but by changing or dropping by code it has to be done same way as adopting.

Moore moved to approve allocation formula with an inclusion for a date of 6 years, review in year 2010 and establish an ad hoc committee, Blair seconded all very reluctantly.

Discussion continued and the following resolution was adopted:

EXHIBIT

113
September 4, 2003

JOURNAL ENTRY

Local Government Allocation Formula

Mr. Innes said with respect to the action taken with the Local Government Allocation formula, he has had contact with the parties involved and Attorney Goodard is present today. The county has been publicly informed they would be sued and would be appropriate to discuss this in an executive session. The County is being asked to reconsider the time limit on this matter.

Commissioner Moore said the date reflecting change is from 2010 to 2012. Mr. Innes said it is his understanding, the other legislative authorities do not want this change, it would be a subsequent change to the formula and they are asking the Board to rescind their motion and adopt the formula as is. At the last meeting, Mr. Innes described the changes in the original proposals and discussion was held and never the less, rather than having the issue go into the state formula, this is a better alternative.

Attorney Richard Goddard represents with Attorney Ryan Calendar, 23 of the municipalities and townships in Lorain County, in the appeal brought against the City of Lorain. The Board of Commissioners and Mr. Cordes have shown a tremendous amount of leadership in this issue and dealt with a formula of which, local government funds and assistance funds that are distributed throughout the county in the past 20 years. There have been technical problems with the administration of the formula, which everyone thought was in place, which resulted in an appeal with the City of Lorain. Mr. Cordes has negotiated with the City of Lorain a reallocation pursuant to a new formula. The Board of Commissioners has agreed to shoulder a portion of the burden of the reallocation of the money. The City of Lorain has compromised significantly from their position and each of the community within the county was asked to shoulder a portion of this burden also. 26 of the communities, other than Lorain have voted on these proposals and 23 of the 26 voted, have approved this formula and the remaining communities will. The reason there should be no time limitation on the formula, is because the alternative formula that was negotiated by the County and City of Lorain and other communities, is it gives the State an easily ministered method of distributing funds and it can be changed by agreement anytime. There is no time frame and years from now, the communities can come together and make changes and the same leadership that was a presented this time, to account for demographics, population and economic situations. There are only 3 counties in the State that try to follow the statutory formula, which has been a source of endless litigation.

Commissioner Vasi said the time frame limits the ability to alter the formula. Attorney Goddard said the time frame as the resolution currently exist with the year 2010, everyone would be back in the statutory formula, unless some other formula was negotiated and adopted. There may be no reason to make a change in the formula already approved and his suggestion to the Board of Commissioners as we have suggested to all other townships and municipalities they represent, the leadership of each of these communities will be monetary in the changes of the county. If there are changes needing to be addressed we all will come together in a responsible manner to address these issues.

Mr. Innes said, as a follow up discussion with the year limitation would be effective, it would not be, therefore he recommends to the Board to adopt the formula as it is and rescind the resolution No. 03-627. Commissioner Moore asked why. Mr. Innes said the term limitation said there were case laws going back and forth and the other entities would not approve this change to the formula.

Journal entry cont.

September 4, 2003

Discussion continued and Blair moved to adopt and rescind Res #03-627 and read the 4th Whereas, paragraph in the resolution, stating "representatives of this Board have been informed that the year limitations are not acceptable to the respective legislative authorities, that the legislative bodies will not reconvene to consider any modifications of the proposal, and the Board of Commissioners must accept or reject the formula as is".

The following resolution was adopted:

RESOLUTION NO. 03-657

A Resolution Adopting and Approving Alternative Method)
 For Appropriating The Lorain County Undivided Local)
 Government Fund Pursuant to Section 5747.53 of the Ohio) September 4, 2003
 Revised Code and the Lorain County Revenue Assistance)
 Fund Pursuant to Section 5747.63 of the Ohio Revised Code)
 And Rescinding Resolution No. 03-627, adopted August 28,)
 2003)

WHEREAS, the legislative authorities for the City of Lorain, the municipality with the largest population located wholly or partially in Lorain County, and a majority of the remaining political subdivisions in Lorain County have approved and adopted by resolution an alternative method for appropriating the Lorain County Undivided Local Government Fund and the Lorain County Revenue Assistance Fund pursuant to Sections 5747.53 and 5747.63; and

WHEREAS, those legislative authorities have submitted said alternative method to the Board of Commissioners of Lorain County for approval;

WHEREAS, the Board of Commissioners adopted Resolution No. 03-627, on August 28, 2003 approving and accepting the proposed alternative formula for the years 2004 through 2010; and

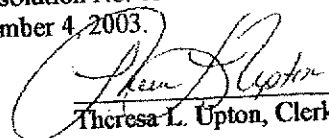
WHEREAS, representatives of this Board have been informed that the year limitations are not acceptable to the respective legislative authorities, that the legislative bodies will not reconvene to consider any modifications of the proposal, and the Board of Commissioners must accept or reject the formula as is; and

WHEREAS, the refusal of the Board of Commissioners to approve and adopt the proposed alternative method formula may result in the state formula method taking effect.

NOW, THEREFORE, BE IT RESOVLED, by the Board of Commissioners of Lorain County, Ohio that this board hereby rescinds Resolution No. 03-627 and adopts and approves the Alternative Method attached hereto as Exhibit A, for allocation of the Lorain County Undivided Local Government Fund and the Lorain County Revenue Assistance Fund pursuant to Revised Code Sections 5747.53 and 5747.63.

Motion by Blair, seconded by Vasi to adopt Resolution. Ayes: Blair & Vasi / Nay: Moore
 Motion carried. _____ (discussion was held on the above)

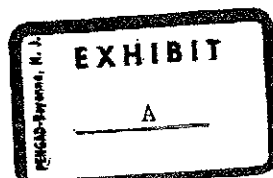
I Theresa L. Upton, Clerk to the Lorain County Board of Commissioners do hereby certify that the above Journal entry and Resolution No. 03-657 is a true copy as it appears in Journal No. 03 on date of September 4, 2003.


 Theresa L. Upton, Clerk

ALTERNATIVE METHOD FOR APPROPRIATING
THE LORAIN COUNTY UNDIVIDED LOCAL GOVERNMENT FUND
PURSUANT TO SECTION 5747.53 OF THE OHIO REVISED CODE
AND THE LORAIN COUNTY REVENUE ASSISTANCE FUND
PURSUANT TO SECTION 5747.63 OF THE OHIO REVISED CODE

In lieu of the method of appropriating the Lorain County Undivided Local Government Fund and the Lorain County Revenue Assistance Fund (collectively, the "Funds") provided in Sections 5747.51 and 5747.61 of the Ohio Revised Code ("R.C."), pursuant to R.C. 5747.53 and R.C. 5747.63, this document proposes an alternative method for allocating the Funds (the "Alternative Method") among Lorain County (the "County"), the City of Lorain ("Lorain"), as the city with the greatest population in Lorain County, and the townships and municipal corporations, excluding Lorain (collectively, the "Remaining Political Subdivisions"), namely City of Amherst, Amherst Township, City of Avon, City of Avon Lake, Brighton Township, Brownhelm Township, Camden Township, Carlisle Township, Columbia Township, Eaton Township, City of Elyria, Elyria Township, Grafton Township, Village of Grafton, Henrietta Township, Huntington Township, Village of Kipton, LaGrange Township, Village of LaGrange, New Russia Township, City of North Ridgeville, City of Oberlin, Penfield Township, Pittsfield Township, Rochester Township, Village of Rochester, Sheffield Township, Village of Sheffield, City of Sheffield Lake, Village of South Amherst, City of Vermillion, Wellington Township, and Village of Wellington.

WHEREAS, Lorain has filed appeals with the Ohio Board of Tax Appeals contesting the action of the Lorain County Budget Commission (the "Budget Commission") allocating the Funds distributed or to be distributed in 2003 (the "2003 Funds");



WHEREAS, representatives of the County, Lorain, and the Remaining Political Subdivisions indicated a desire to avoid further litigation involving the allocation of the 2003 Funds; and

WHEREAS, the County, Lorain and a majority of the Remaining Political Subdivisions have indicated a desire to adopt an alternative formula for the allocation of the Funds pursuant to R.C. 5747.53 and R.C. 5747.63.

NOW, THEREFORE, representatives from the County, Lorain, and a majority of the Remaining Political Subdivisions hereby propose the following Alternative Method for allocating the Funds each calendar year pursuant to R.C. 5747.53 and R.C. 5747.63:

1. Allocation. As soon as possible after the adoption of this Alternative Method as provided in Section 6 and by no later than August 25 of each succeeding calendar year, the Budget Commission shall allocate the Funds each calendar year pursuant to this Alternative Method using the following formula.

(a) The Budget Commission shall allocate:

- (i) to the County 48.302% of the Funds plus \$250,000.00 for the 2004 calendar year allocation, and 48.302% of the Funds for each calendar year allocation thereafter,
- (ii) to Lorain 20.212% of the Funds for each calendar year allocation, and
- (iii) that percentage of the remaining Funds to each of the Remaining Political Subdivisions for each calendar year allocation as follows:

<u>Subdivision</u>	<u>New</u>
Amherst City	4.732%
Amherst Township	1.525%
Avon City	4.466%
Avon Lake City	8.487%
Brighton Township	0.383%
Brownhelm Township	0.606%
Camden Township	0.658%
Carlisle Township	2.083%
Columbia Township	2.024%
Eaton Township	1.832%
Elyria City	31.907%
Elyria Township	0.992%
Grafton Township	0.844%
Grafton Village	1.454%
Henrietta Township	0.659%
Huntington Township	0.616%
Kipton Village	0.347%
LaGrange Township	0.991%
LaGrange Village	0.727%
New Russia Township	0.936%
North Ridgeville City	10.316%
Oberlin City	8.135%
Penfield Township	0.479%
Pittsfield Township	0.725%
Rochester Township	0.362%
Rochester Village	0.262%
Sheffield Township	1.515%
Sheffield Village	1.552%
Sheffield Lake City	4.618%
South Amherst Village	1.435%
Vermillion City	1.576%
Wellington Township	0.637%
Wellington Village	2.119%
Lorain County Metropolitan Park District	0.000%

(b) In the event that the percentage of municipal population within the County should reach eighty-one percent (81%) or more of the total population of the County, the Budget Commission shall allocate:

(i) to the County 30.000% of the Funds as required by R.C.

5747.51(H),

(ii) to Lorain 27.412% of the Funds, and

(iii) that percentage of the remaining Funds to each of the Remaining

Political Subdivisions as set forth in Section 1.(a)(iii) herein.

2. Reporting. The Budget Commission shall submit to the County, Lorain, and each Remaining Political Subdivision a report which sets forth the following information:

(a) the total amount of the Funds allocated by the State of Ohio that year to Lorain County for allocation by the Budget Commission to the County, Lorain, and the Remaining Political Subdivisions;

(b) the amount of the Funds allocated by the Budget Commission to the County, to Lorain, and to each Remaining Political Subdivision, expressed both in dollar amounts and percentage of the total amount of the Funds allocated by the Budget Commission; and

(c) the total population of the County, Lorain, and each Remaining Political Subdivision as reported in the reports on population in Ohio by the Department of Development as of the twentieth day of July of the year the report is submitted, expressed in both raw numbers and percentage of population of the County.

Such report shall be submitted to the County, Lorain, and each Remaining Political Subdivision no later than August 25 of each year.

3. Duration. This Alternative Method shall apply to the allocation of the Funds for 2004 and for each calendar year thereafter until this Alternative Method is revised or terminated by the County, the city with the greatest population within the County, and a majority of the remaining political subdivisions within the County.

4. Changes in Legal Status of Eligible Political Subdivisions.

(a) In the event that a township entirely merges with a municipal corporation pursuant to R.C. Section 709.43, then that municipal corporation shall receive as its allocation of the Funds that percentage of the Funds allocated to that municipal corporation plus that percentage of the Funds allocated to the merged township as set forth in Section 1.(a)(iii) or Section 1.(b)(iii) herein, as applicable.

(b) In the event that an entire territory of a township is incorporated pursuant to R.C. Section 707.01 et. seq. to form a new municipal corporation, then the new municipal corporation shall receive that percentage of the Funds allocated to that township as set forth in Section 1.(a)(iii) or Section 1.(b)(iii) herein, as applicable.

(c) In the event that a portion of the territory of a township is incorporated pursuant to R.C. Section 707.01 et. seq. to form a new municipal corporation, then that percentage of the Funds previously allocated to that township as set forth in Section 1.(a)(iii) or Section 1.(b)(iii) herein, shall be allocated to the new municipal corporation and the remaining township as follows:

- (i) the new municipal corporation shall receive that percentage of the Funds previously allocated to the township equal to that percentage of the township's population located within the new municipal corporation; and
- (ii) the remaining township shall receive that percentage of the Funds previously allocated to the township equal to that percentage of the township's population located within the remaining township.

(d) In the event that a city becomes a village, or a village becomes a city, the new entity shall receive the former entity's allocation as set forth in Section 1.(a)(iii) or Section 1.(b)(iii) herein, as applicable.

5. Stipulation in an Appeal. This Alternative Method adopts a formula for the allocation of the 2004 Funds and beyond as set forth in Section 2 above. This document may be introduced into evidence at the Board of Tax Appeals without objection of any political subdivision that is a party to an appeal when it is claimed that the County, Lorain, or any of the Remaining Political Subdivisions has attempted to appeal pursuant to R.C. 5747.55 or when it is claimed that the Budget Commission has failed to make an allocation or distribution of the Funds in accordance with the terms of this Alternative Method.

6. Entire Proposal. This Alternative Method constitutes the complete proposal with respect to the matters addressed herein and supersedes all prior agreements and understandings. This Alternative Method may be amended or modified only pursuant to R.C. 5747.53 and R.C. 5747.63.

7. Adoption. Pursuant to R.C. 5747.53 and R.C. 5747.63, this Alternative Method shall become effective when approved by (i) the Board of Commissioners of the County (the "Commissioners"), (ii) the legislative authority of Lorain, and (iii) a majority of the boards of township trustees and legislative authorities of municipal corporations in Lorain County, Ohio excluding Lorain. In granting or denying such approval, the Commissioners, the boards of township trustees, and the legislative authorities of municipal corporations shall act by motion. A motion to approve shall be passed upon a majority vote of the members of the Commissioners, the board of township trustees, or the legislative authority of a municipal corporation, shall take effect immediately, and need not be published.

8. Governing Law. This Alternative Method shall be governed by and construed in accordance with the laws of the State of Ohio.

9. Successors. This Alternative Method shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and permitted assignees of the Budget Commission, the County, Lorain, and the Remaining Political Subdivisions.

10. Captions. The paragraph headings contained in this Alternative Method are for reference purposes only and shall not affect in any way the meaning or interpretation of this Alternative Method.

BUDGET COMMISSION of LORAIN COUNTY, OHIO

September 10, 2003

LORAIN COUNTY

- DANIEL J. TALAREK
County Treasurer
- MARK R. STEWART
County Auditor
- JEFFREY H. MANNING
County Prosecutor

To: All Local Governments:


Please be advised that pursuant to Revised Code Sections 5747.53 and 5747.63, the legislative authorities necessary to adopt an alternative method for apportionment of the Lorain County Undivided Local Government Fund and Revenue Assistance Fund, have submitted a new alternative method to the Lorain County Budget Commission.

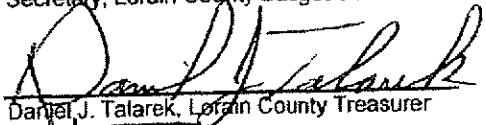
Pursuant to the new alternative method the Lorain County Budget Commission proposes to distribute the Local Government and Local Government Revenue Assistance Funds for the year 2004 as follows:

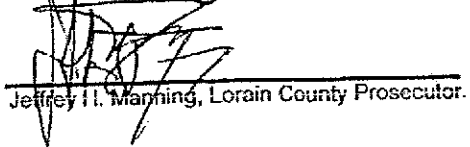
County	48.302% plus \$250,000 for the 2004 calendar year allocation.		
Lorain City	20.212%		
from the remaining funds,			
Amherst City	4.732%	Lagrange Township	0.991%
Amherst Township	1.525%	Lagrange Village	0.727%
Avon City	4.466%	New Russia Township	0.936%
Avon Lake City	8.487%	North Ridgeville City	10.316%
Brighton Township	0.383%	Oberlin City	8.135%
Brownhelm Township	0.606%	Penfield Township	0.479%
Camden Township	0.658%	Pittsfield Township	0.725%
Carlisle Township	2.083%	Rochester Township	0.362%
Columbia Township	2.024%	Rochester Village	0.262%
Eaton Township	1.832%	Sheffield Township	1.515%
Elyria City	31.907%	Sheffield Village	1.552%
Elyria Township	0.992%	Sheffield Lake City	4.618%
Grafton Township	0.844%	South Amherst Village	1.435%
Grafton Village	1.454%	Vermilion City	1.576%
Henrietta Township	0.659%	Wellington Township	0.637%
Huntington Township	0.616%	Wellington Village	2.119%
Kipton Village	0.347%	Lorain County Met Park	0.000%

The Lorain County Budget Commission will meet on Wednesday, September 24, 2003 at 11:00 a.m. in the Auditor/Treasurer Conference room to approve the new alternative method and authorize distribution.

Respectfully submitted,


 Mark R. Stewart, Lorain County Auditor
 Secretary, Lorain County Budget Commission


 Daniel J. Talarek, Lorain County Treasurer


 Jeffrey H. Manning, Lorain County Prosecutor.

Budget Commission Meeting/Agenda:

September 24, 2003

Resolution to approve and adopt alternative method for apportioning Local Government and Revenue Assistance funds:

WHEREAS, pursuant to Ohio Revised Code Sections 5747.53 and 5747.63, an alternative method of apportionment of undivided local government funds and undivided local government assistance funds has been approved by the following: Board of Commissioners of Lorain County, Ohio; the legislative authority of Lorain City, the city with the greatest population in Lorain County; and a majority of the boards of township trustees and legislative authorities of municipal corporations in Lorain County, a list of which is attached to this resolution as Exhibit B; and

WHEREAS, pursuant to Revised Code Section 5747.51 and 5747.62 the Lorain County Budget Commission has met this day to determine allocation of the undivided local government funds and undivided revenue assistance funds.

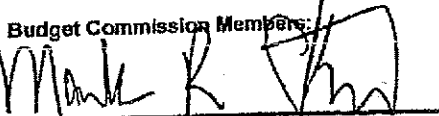
THEREFORE BE IT RESOLVED, by the Lorain County Budget Commission that the alternative method of allocation of apportionment of undivided local government funds and undivided local assistance funds as set forth in attached Exhibit A is hereby approved and adopted as the alternative formula of apportionment for said funds in Lorain County. This includes the substantive provisions of the alternative method contained in paragraphs 1, 3, and 4 of the "Master Agreement" submitted by the aforesaid sub-divisions.

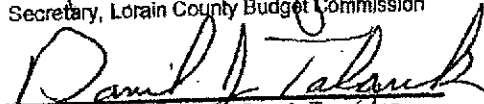
BE IT FURTHER RESOLVED, that this Board finds that paragraph 2 of "Master Agreement" addresses procedural issues in regards to the manner in which the Budget Commission performs its functions and as such is not a substantive part of the alternative method. Paragraphs 5 through 10 address matters concerning the participants in the allocation of funds and are not addressed to the Budget Commission.

THE BUDGET COMMISSION THEREFORE ACKNOWLEDGES; that it will use its best efforts to comply with those provisions inasmuch it can do so and be in compliance with all laws applicable to the Budget Commission and its obligations to distribute local government and revenue assistance funds; however, the Budget Commission does not intend its adoption of the alternative method to be construed as binding the Budget Commission or its successors to a contractual obligation regarding the manner in which it performs its statutory obligations, which by law remain in the discretion of the Budget Commission.

Certified this 24th day of September, 2003

Budget Commission Members:


Mark R. Stewart, Lorain County Auditor
Secretary, Lorain County Budget Commission


Daniel J. Talarek, Lorain County Treasurer


Jeffrey H. Manning, Lorain County Prosecutor

EXHIBIT A

Budget Commission Meeting/Agenda:

September 24, 2003

In reviewing the proposed "Master Agreement" sent to political sub-divisions and the Lorain County Budget Commission on August 7, 2003 the members approve under the following information:

Section (i) ALLOCATION

As soon as possible after the adoption of this Alternative Method the Budget Commission shall allocate the funds each calendar year pursuant to the Alternative method using the following formula.

(a) The Budget Commission shall allocate beginning January, 2004:

(i) **County** **48.302%** of the funds plus \$250,000 for the 2004 Calendar year allocation, and 48.302% of the funds for each calendar year allocation thereafter,

(ii) **Lorain City** **20.212%** of the funds for each calendar year allocation

(iii) **remaining political sub-divisions** that percentage of the remaining funds for each calendar year allocation as follows:

<u>Sub-Division</u>	<u>New</u>
Amherst City	4.732%
Amherst Township	1.525%
Avon City	4.466%
Avon Lake City	8.487%
Brighton Township	0.383%
Brownhelm Township	0.606%
Camden Township	0.658%
Carlisle Township	2.083%
Columbia Township	2.024%
Easton Township	1.832%
Elyria City	31.907%
Elyria Township	0.992%
Grafton Township	0.844%
Grafton Village	1.454%
Henrietta Township	0.658%
Huntington Township	0.616%
Kipton Village	0.347%
Lagrange Township	0.981%
Lagrange Village	0.727%
New Russia Township	0.938%
North Ridgeville City	10.316%
Oberlin City	8.135%
Penfield Township	0.479%
Pittsfield Township	0.725%
Rochester Township	0.362%
Rochester Village	0.262%
Sheffield Township	1.515%
Sheffield Village	1.552%
Sheffield Lake City	4.618%
South Amherst Village	1.435%
Vernilion City	1.576%
Wellington Township	0.637%
Wellington Village	2.119%
Lorain County Met Park District	0.000%
Total	100.000%

BUDGET COMMISSION
APPROVAL OF NEW ALLOCATION
September 24, 2003
Mark R. Stewart, Secretary Budget Commission
Daniel J. Talarek, Lorain County Treasurer
Jeffrey H. Manning, Lorain County Prosecutor

Section (b)

In the event that the percentage of municipal population within the County should reach eighty-one percent (81%) or more of the total population of the County, the Budget Commission shall allocate:

(i) **County** **30.000%** of the funds as required by R.C.5747.51(H)

(ii) **Lorain City** **27.412%** of the funds

(iii) **remaining political sub-divisions** that percentage of the remaining funds as set forth in Section 1.(a)(5i) herein.

September 15, 2003

Budget Commission received Notice of Voluntary Dismissal from Lorain City with regard to the appeal filed with Board of Tax Appeals, Columbus, Ohio

EXHIBIT B

Based on a letter addressed to Mr. Lines from Calfee, Halter & Gotsdold on August 26, 2003 the Budget Commission received the following information:

In order to enact a new alternative formula, the Ohio Revised Code requires the approval of the largest city in the county (City of Lorain), the County Commissioners and a majority of the remaining municipalities and townships (a majority is 17).

As of this date, Mr. Callender stated the City of Lorain and a majority of the remaining municipalities and townships have approved the alternative formula.

Below is a list the Budget Commission has received as of September 22, 2003.

19 SUB-DIVISIONS APPROVED PERCENTAGES THROUGH NEW PROPOSED PERCENTAGES FOR 2004

	<u>CITIES</u>	<u>ORDINANCES RECEIVED</u>
1	AVON CITY	Ordinance #189-03 Adopted on August 11, 2003 - Certificate of filing - September 18, 2003
2	BERLIN CITY	Ordinance #03-61 Adopted on August 19, 2003 - Certificate of filing - September 17, 2003
	<u>VILLAGES</u>	
3	GRAFTON VILLAGE	Ordinance #03-021 Adopted on August 19, 2003 - Certificate of filing - September 12, 2003
4	LAGRANGE VILLAGE	Resolution # Adopted on August 14, 2003 - Certificate of filing - September 18, 2003
5	SOUTH AMHERST VILLAGE	Resolution # 530 Adopted on August 11, 2003 - Certificate of filing - August 28, 2003
6	WELLINGTON VILLAGE	Resolution #2003-21 Adopted on August 4, 2003 - Certificate of filing - September 12, 2003
	<u>TOWNSHIPS</u>	
7	BRIGHTON TOWNSHIP	Resolution # Adopted on August 25, 2003 - Certificate of filing - September 19, 2003
8	BROWNHELM TOWNSHIP	Resolution # Adopted on August 12, 2003 - Certificate of filing - September 19, 2003
9	CAMDEN TOWNSHIP	Resolution # 03-37 Adopted on August 11, 2003 - Certificate of filing - September 19, 2003
10	CARLISLE TOWNSHIP	Resolution # 2003-30 Adopted on August 11, 2003 - Certificate of filing - August 27, 2003
11	COLUMBIA TOWNSHIP	Resolution # 03-42 Adopted on August 18, 2003 - Certificate of filing - September 19, 2003
12	EATON TOWNSHIP	Resolution # Adopted on August 19, 2003 - Certificate of filing - September 15, 2003
13	ELYRIA TOWNSHIP	Resolution # Adopted on September 3, 2003 - Certificate of filing - September 17, 2003
14	GRAFTON TOWNSHIP	Resolution # Adopted on August 12, 2003 - Certificate of filing - September 18, 2003
15	HUNTINGTON TOWNSHIP	Resolution # 03-68 Adopted on August 11, 2003 - Certificate of filing - September 19, 2003
16	PENFIELD TOWNSHIP	Resolution # 03-6-3B Adopted on August 5, 2003 - Certificate of filing - August 25, 2003
17	ROCHESTER TOWNSHIP	Resolution # Adopted on August 11, 2003 - Certificate of filing - September 19, 2003
18	NEW RUSSIA TOWNSHIP	Resolution # 2003-08-11 Adopted on August 12, 2003 - Certificate of filing - September 12, 2003
19	WELLINGTON TOWNSHIP	Resolution # 2003-04 Adopted on August 5, 2003 - Certificate of filing - August 27, 2003

Source: Lorain County Auditor
Tax Assessment Department

<p>COUNTY OF LORAIN APPROVED NEW PERCENTAGES Resolution #03-657 Adopted on - September 4, 2003 Certificate of Filing - September 8, 2003 BUDGET COMMISSION RECEIVED ORIGINAL RESOLUTION</p>
<p>CITY OF LORAIN APPROVED NEW PERCENTAGES Ordinance #138-03 Adopted on - August 19, 2003 Certificate of Filing - September 8, 2003 BUDGET COMMISSION RECEIVED ORIGINAL RESOLUTION</p>

September 11, 2003

**LOCAL GOVERNMENT
PROPOSED PERCENTAGES/DISTRIBUTION FOR 2004**

**BASED ON NEW PROPOSED PERCENTAGES
PLUS \$250,000 COUNTY AGREEMENT TO
BE PAID BACK TO GENERAL FUND IN YEAR 2004**

**BUDGET COMMISSION
APPROVAL ON
September 24, 2003**

SUB-DIVISION	TOTAL LOCAL GOVT ENTITLEMENT PERCENT	2004	
		\$	ALLOCATION
		\$	16,572,947.00
COUNTY GENERAL FUND	48.302%	\$	8,005,064.84
LORAIN CITY	20.212%	\$	3,348,724.05
Total to be taken off of the entitlement first		\$	11,354,788.89
BALANCE REMAINING FOR OTHER SUB-DIVISIONS		\$	5,218,158.11
REDUCING \$250,000 FROM SUB-DIVISIONS TO BE RE-PAID TO GENERAL FUND		\$	250,000.00
BALANCE REMAINING FOR OTHER SUB-DIVISIONS AFTER REDUCTION OF \$250,000		\$	4,968,158.11
AMHERST CITY	4.732%	\$	235,093.24
AVON CITY	4.466%	\$	221,877.94
AVON LAKE CITY	8.487%	\$	421,947.64
ELYRIA CITY	31.907%	\$	1,588,190.21
NORTH RIDGEVILLE CITY	10.318%	\$	512,515.19
OSHERLIN CITY	0.135%	\$	404,159.66
SHEFFIELD LAKE CITY	4.818%	\$	229,429.54
VERMILION CITY	1.570%	\$	78,288.17
GRAFTON VILLAGE	1.454%	\$	72,287.02
KIPTON VILLAGE	0.347%	\$	17,289.51
LAGRANGE VILLAGE	0.727%	\$	36,118.51
ROCHESTER VILLAGE	0.282%	\$	13,016.57
SHEFFIELD VILLAGE	1.552%	\$	77,105.81
SO. AMHERST VILLAGE	1.435%	\$	71,293.07
WELLINGTON VILLAGE	2.119%	\$	105,276.27
AMHERST TOWNSHIP	1.526%	\$	75,784.41
BRIGHTON TOWNSHIP	0.383%	\$	19,028.05
BROWNHelm TOWNSHIP	0.608%	\$	30,107.04
CAMDEN TOWNSHIP	0.650%	\$	32,890.48
CARLISLE TOWNSHIP	2.893%	\$	143,486.73
COLUMBIA TOWNSHIP	2.024%	\$	100,555.52
EATON TOWNSHIP	1.832%	\$	91,016.88
ELYRIA TOWNSHIP	0.802%	\$	40,284.13
GRAFTON TOWNSHIP	0.844%	\$	41,931.28
HENRIETTA TOWNSHIP	0.659%	\$	32,740.16
HUNTINGTON TOWNSHIP	0.616%	\$	30,603.85
LAGRANGE TOWNSHIP	0.991%	\$	49,234.45
PENFIELD TOWNSHIP	0.470%	\$	23,797.48
PITTSFIELD TOWNSHIP	0.725%	\$	36,018.15
ROCHESTER TOWNSHIP	0.582%	\$	29,184.73
NEW RUSSIA TOWNSHIP	0.030%	\$	1,501.96
SHEFFIELD TOWNSHIP	1.515%	\$	75,267.60
WELLINGTON TOWNSHIP	0.637%	\$	31,547.17
MET PARK IS NOT INCLUDED IN THE NEW PERCENTAGES		\$	
TOTAL OTHER SUB-DIVISIONS		\$	4,968,158.11
COUNTY GENERAL FUND		\$	8,005,064.84
LORAIN CITY		\$	3,348,724.05
TOTAL LOCAL GOVERNMENT ENTITLEMENT		\$	16,572,947.00

Budget Commission
is approving the \$250,000
to be paid back to County
General Fund.

SOURCE: LORAIN COUNTY AUDITOR
TAX SETTLEMENT DEPARTMENT

No. 3001 P. 6

ELYRIA SOLICITOR/PROSECUTOR

SEP. 30. 2003 8:59AM

September 11, 2003

**REVENUE ASSISTANCE
PROPOSED PERCENTAGES/DISTRIBUTION FOR 2004**

BASED ON NEW PROPOSED PERCENTAGES

BUDGET COMMISSION
APPROVAL ON
September 24, 2003

<u>SUB-DIVISION</u>	<u>PERCENT</u>	<u>2004</u>	<u>ALLOCATION</u>
TOTAL REVENUE ASST. ENTITLEMENT		\$	2,374,939.00
COUNTY GENERAL FUND	48.302%	\$	1,147,143.02
LORAIN CITY	20.212%	\$	480,022.67
Total to be taken off of the entitlement first		\$	1,627,165.69
BALANCE REMAINING FOR OTHER SUB-DIVISIONS		\$	747,773.31
AMHERST CITY	4.752%	\$	35,364.89
AVON CITY	4.466%	\$	33,395.55
AVON LAKE CITY	8.487%	\$	63,463.52
ELYRIA CITY	31.907%	\$	238,592.09
NORTH RIDGEVILLE CITY	10.916%	\$	77,140.29
OSHERLIN CITY	8.135%	\$	60,831.36
SHEFFIELD LAKE CITY	4.648%	\$	34,832.17
VERMILION CITY	1.578%	\$	11,764.91
GRAFTON VILLAGE	1.454%	\$	10,872.62
KIPTON VILLAGE	0.347%	\$	2,594.77
LAGRANGE VILLAGE	0.727%	\$	5,436.31
ROCHESTER VILLAGE	0.282%	\$	1,859.17
SHEFFIELD VILLAGE	1.552%	\$	11,695.44
SO. AMHERST VILLAGE	1.435%	\$	10,730.55
WELLINGTON VILLAGE	2.119%	\$	15,845.32
AMHERST TOWNSHIP	1.525%	\$	11,402.54
BRIGHTON TOWNSHIP	0.369%	\$	2,663.97
BROWNHELM TOWNSHIP	0.600%	\$	4,531.51
CAMPDEN TOWNSHIP	0.668%	\$	4,920.35
CARLISLE TOWNSHIP	2.089%	\$	15,676.12
COLUMBIA TOWNSHIP	1.632%	\$	12,134.53
EATON TOWNSHIP	0.992%	\$	7,417.81
ELYRIA TOWNSHIP	0.844%	\$	6,311.21
GRAFTON TOWNSHIP	0.859%	\$	6,427.83
HENRIETTA TOWNSHIP	0.819%	\$	6,106.28
HUNTINGTON TOWNSHIP	0.991%	\$	7,410.43
LAGRANGE TOWNSHIP	0.479%	\$	3,581.83
PENFIELD TOWNSHIP	0.725%	\$	5,421.38
PITTSFIELD TOWNSHIP	0.362%	\$	2,706.84
ROCHESTER TOWNSHIP	0.358%	\$	2,699.16
NEW RUSSIA TOWNSHIP	1.515%	\$	11,328.77
SHEFFIELD TOWNSHIP	0.837%	\$	6,283.32
WELLINGTON TOWNSHIP		\$	
MET PARK IS NOT INCLUDED IN THE NEW PERCENTAGES		\$	747,773.31
TOTAL OTHER SUB-DIVISIONS		\$	1,147,143.02
COUNTY GENERAL FUND		\$	480,022.67
LORAIN CITY		\$	2,374,939.00
TOTAL LOCAL GOVERNMENT ENTITLEMENT		\$	2,374,939.00

SOURCE: LORAIN COUNTY AUDITOR
TAX SETTLEMENT DEPARTMENT

September 11, 2003

**TOTAL
LOCAL GOVERNMENT & REVENUE ASSISTANCE
PROPOSED PERCENTAGES/DISTRIBUTION FOR 2004**

**BASED ON NEW PROPOSED PERCENTAGES
PLUS \$250,000 COUNTY AGREEMENT TO
BE PAID BACK TO GENERAL FUND IN YEAR 2004**

**BUDGET COMMISSION
APPROVAL ON
September 24, 2003**

<u>SUB-DIVISION</u>	<u>TOTAL ENTITLEMENT PERCENT</u>	<u>2004 \$ 18,947,886.00 ALLOCATION</u>
COUNTY GENERAL FUND	48.302%	\$ 9,152,207.88
LORAIN CITY	20.212%	\$ 3,829,746.72
Total to be taken off of the entitlement first		\$ 12,981,954.58
BALANCE REMAINING FOR OTHER SUB-DIVISIONS		\$ 5,985,931.42
REDUCING \$250,000 FROM SUB-DIVISIONS TO BE RE-PAID TO GENERAL FUND		\$ 250,000.00
BALANCE REMAINING FOR OTHER SUB-DIVISIONS AFTER REDUCTION OF \$250,000		\$ 5,715,931.42
AMHERST CITY	4.732%	\$ 270,477.87
AVON CITY	4.468%	\$ 255,273.49
AVON LAKE CITY	8.487%	\$ 485,111.10
ELYRIA CITY	31.807%	\$ 1,823,782.24
NORTH RIDGEVILLE CITY	10.316%	\$ 589,856.48
OHERLIN CITY	8.135%	\$ 484,591.02
SHEFFIELD LAKE CITY	4.618%	\$ 269,901.71
VERMILION CITY	1.576%	\$ 90,083.08
GRAFTON VILLAGE	1.454%	\$ 83,109.64
KIPTON VILLAGE	0.347%	\$ 19,834.28
LAGRANGE VILLAGE	0.727%	\$ 41,554.82
ROCHESTER VILLAGE	0.262%	\$ 14,873.74
SHEFFIELD VILLAGE	1.582%	\$ 88,711.26
SO. AMHERST VILLAGE	1.433%	\$ 82,023.62
WELLINGTON VILLAGE	2.118%	\$ 121,120.59
AMHERST TOWNSHIP	1.525%	\$ 87,187.86
BRIGHTON TOWNSHIP	0.303%	\$ 21,862.02
BROWNHelm TOWNSHIP	0.606%	\$ 34,838.55
CAMDEN TOWNSHIP	0.658%	\$ 37,810.83
CARLISLE TOWNSHIP	2.083%	\$ 119,062.85
COLUMBIA TOWNSHIP	2.024%	\$ 115,890.46
EATON TOWNSHIP	1.832%	\$ 104,715.87
ELYRIA TOWNSHIP	0.992%	\$ 58,702.04
GRAFTON TOWNSHIP	0.844%	\$ 48,242.46
HENRIETTA TOWNSHIP	0.659%	\$ 37,867.99
HUNTINGTON TOWNSHIP	0.618%	\$ 35,210.13
LAGRANGE TOWNSHIP	0.691%	\$ 39,844.88
PENFIELD TOWNSHIP	0.479%	\$ 27,979.31
PITTSFIELD TOWNSHIP	0.726%	\$ 41,440.51
ROCHESTER TOWNSHIP	0.362%	\$ 20,061.87
NEW RUSSIA TOWNSHIP	0.936%	\$ 53,601.12
SHEFFIELD TOWNSHIP	1.515%	\$ 85,690.37
WELLINGTON TOWNSHIP	0.637%	\$ 36,410.49
NET PARK IS NOT INCLUDED IN THE NEW PERCENTAGES		\$
TOTAL OTHER SUB-DIVISIONS		\$ 5,715,931.42
COUNTY GENERAL FUND		\$ 9,152,207.88
LORAIN CITY		\$ 3,829,746.72
TOTAL LOCAL GOVERNMENT ENTITLEMENT		\$ 18,947,886.00

Budget Commission
is approving the \$250,000
to be paid back to County
General Fund.

SOURCE: LORAIN COUNTY AUDITOR
TAX SETTLEMENT DEPARTMENT

No. 3001 P. 8

ELYRIA SOLICITOR/PROSECUTOR

Sep. 30, 2003 9:00AM

BOARD OF TAX APPEALS
STATE OF OHIO



City of Lorain,

Appellant,

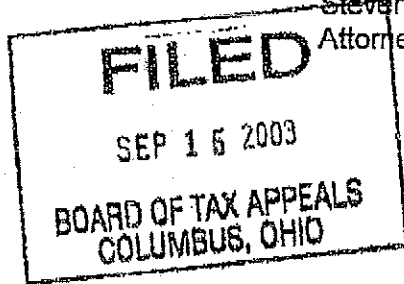
vs.

Lorain County
Budget Commission, et al.,

Appellees.

Case No. 02-T-1865
(BUDGET COMM. - LGF/RAF)

Steven L. Smiseck
Attorney-Examiner



NOTICE OF VOLUNTARY DISMISSAL

Now comes Appellant, City of Lorain, by and through counsel, and hereby voluntarily dismisses the above-captioned appeal with prejudice pursuant to Ohio Adm. Code 57-1-17(A). The reason for this dismissal is that all issues concerning the 2003 Undivided Local Government Fund and Undivided Local Government Revenue Assistance Fund have been resolved to the satisfaction of Appellant.

Respectfully submitted,

John R. Varanese (0044176)
85 East Gay St., Ste. 1000
Columbus, Ohio 43215-3118
614.220.9440 fax 614.220.9441

HAND DELIVERED

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Appellant's Notice of Voluntary Dismissal was served upon the parties noted below by ordinary U.S. mail, postage prepaid, this 5th day of September, 2003.


John R. Varanese

Richard P. Goddard, Esq.
Ryan K. Callender, Esq.
800 Superior Ave., Ste. 1400
Cleveland, Ohio 44114-2688
Counsel for Appellees: Cities of Avon and Oberlin; Villages of Grafton, LaGrange, Sheffield, S. Amherst and Wellington; and Townships of Brownhelm, Camden, Carlisle, Columbia, Eaton, Elyria, Henrietta, Huntington, LaGrange, New Russia, Pittsfield, Sheffield and Wellington

Mary Rose Dangelo, Clerk
Grafton Twp.
18789 Avon Belden Rd.
Grafton, Ohio 44044

Leonard English, fiscal officer
Sheffield Lake City
609 Harris Rd.
Sheffield Lake, Ohio 44054

John T. Sunderland, Esq.
Thompson Hine LLP
10 West Broad St., Ste 700
Columbus, Ohio 43215
Counsel for Lorain Cty. Budget Comm.

Kenneth S. Stumphouser, Esq.
Abraham Lieberman, Esq.
Law Dir. and Asst. Law Dir., City of Amherst
5455 Detroit Rd.
Sheffield Village, Ohio 44054
Counsel for Appellee City of Amherst

Eric R. Severs, Esq.
Oberlin City Solicitor
5 South Main Street
Oberlin, Ohio 44074
Counsel for Appellee Oberlin City

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OHIO BOARD OF TAX APPEALS

City of Lorain,)	
)	
Appellant,)	CASE NO. 2002-T-1865
)	
vs.)	(BUDGET COMMISSION: ULGF & ULGRAF)
)	
Lorain County Budget	)	ORDER
Commission, et al.,)	
	)	(Dismissing Appeal)
)	
Appellees.)	

APPEARANCES:

For the Appellant - John R. Varanese
 Attorney at Law
 85 East Gay Street
 Suite 1000
 Columbus, Ohio 43215-3118

For the Budget Commission - Thompson Hine, L.L.P.
 John T. Sunderland
 10 West Broad Street
 Suite 700
 Columbus, Ohio 43215

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

For the City of Oberlin - Eric R. Severs
 Oberlin City Solicitor
 5 South Main Street
 Oberlin, Ohio 44074

For Appellee Villages, Municipalities, and Townships - Calfee, Halter & Griswold, L.L.P.
 Richard P. Goddard
 Ryan K. Callender
 1400 McDonald Investment Center
 800 Superior Avenue
 Cleveland, Ohio 44114-2688

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

For Grafton Twp. - Mary Rose D'Angelo, Clerk
 18789 Avon Belden Road
 Grafton, Ohio 44044

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Entered SEP 26 2003

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

Pursuant to the appellant's written request, the Board of Tax Appeals hereby orders that the above-styled appeal be dismissed.

BOARD OF TAX APPEALS			
RESULT OF VOTE	YES	NO	DATE
Ms. Jackson	<i>TAG</i>		9/24/03
Ms. Margulies	<i>DM</i>		9/19/03
Mr. Eberhart	<i>RE</i>		9/19/03

SLS

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
Julia M. Snow, Board Secretary