

RESOLUTION NO. R03-21 CMS

A RESOLUTION AUTHORIZING THE CITY SOLICITOR TO REPRESENT THE CITY OF OBERLIN IN REGARD TO AN APPEAL FILED WITH THE OHIO BOARD OF TAX APPEALS CONCERNING THE OHIO LOCAL GOVERNMENT FUND AND LOCAL GOVERNMENT REVENUE ASSISTANCE FUND AND DECLARING AN EMERGENCY

BE IT RESOLVED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the City Solicitor be and hereby is authorized to represent the City of Oberlin in an appeal filed by the City of Elyria and four (4) other governmental entities and presently pending before the Ohio Board of Tax Appeals, to be charged to the City as extraordinary expense.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Resolution is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio, or to provide for the usual daily operation of a municipal department, to wit:

"to provide immediate legal representation for the City for a pending appeal before the Ohio Board of Tax Appeals," and shall take effect immediately upon passage.

PASSED: 1st Reading – November 17, 2003 (E)
2nd Reading –
3rd Reading –

ATTEST:


CLERK OF COUNCIL


CHAIR OF COUNCIL

POSTED: November 18, 2003

EFFECTIVE DATE: November 18, 2003

a:/ORD03-21CS.TaxAppeals

BOARD OF TAX APPEALS
STATE OF OHIO

CITY OF ELYRIA, OHIO)
Thaddeus Pileski, Auditor)
328 Broad 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)

and)

NOTICE OF APPEAL

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)

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 Berts 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 Gnanadt, 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 Nixode, 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-1365 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.

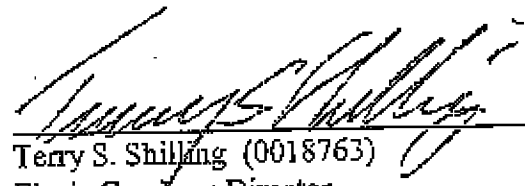
WHEREFORE, Appellants, the City of Elyria, the City of North Ridgeville, the City of Avon Lake, Amherst Township and Lorain County Metropolitan Park District, hereby pray that the Board of Tax Appeals:

- (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.

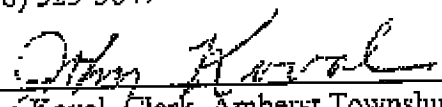
Respectfully submitted,



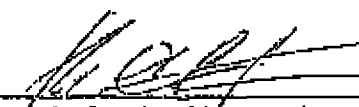
Thaddeus Pileski, City Auditor
City of Elyria
328 Broad Street.
Elyria, Ohio 44035



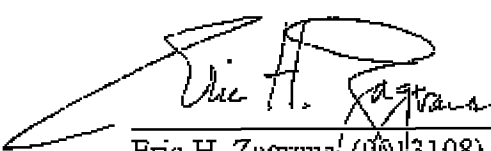
Terry S. Shilling (0018763)
Elyria City Law Director
328 Broad Street
Elyria, Ohio 44035
(440) 323-5647




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. Zagrus (44) 3108
Law Director of the City of North Ridgeville
7307 Avon Belden Road
North Ridgeville, Ohio 44039
(440) 353-0848



Joseph Newhart, 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 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