**[Cite as *Hilltop Commons, L.L.C. v. Mingo*, 2012-Ohio-5661.]**

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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| The Hilltop Commons, LLC, | : | |
| Appellant-Appellant, | : | |
| | | No. 11AP-1089 |
| v. | : | (C.P.C. No. 11CVF-1274) |
| Clarence Mingo, II, Auditor of Franklin County, Board of Revision of Franklin County, and Board of Education of the Columbus City School District, | : | (REGULAR CALENDAR) |
| Appellees-Appellees. | : | |

D E C I S I O N

Rendered on December 4, 2012

*Bluestone Law Group, LLC*, and *Charles L. Bluestone*, for appellant.

*Rich & Gillis Law Group, LLC, Jeffrey A. Rich, Mark H. Gillis*, and *Allison J. Crites*, for appellee Board of Education of the Columbus City School District.

APPEAL from the Franklin County Court of Common Pleas

BRYANT, J.

**{¶ 1}** Appellant-appellant, The Hilltop Commons, LLC ("Hilltop"), appeals from a judgment of the Franklin County Court of Common Pleas affirming a decision of appellee-appellee, Franklin County Board of Revision ("BOR"), that dismissed Hilltop's Complaint Against Valuation of Real Property ("complaint") for lack of jurisdiction. Because (1) the BOR properly concluded Hilltop's complaint failed to meet the statutory requirements

essential for subject-matter jurisdiction, and (2) the BOR's dismissal did not violate Hilltop's right to equal protection, we affirm.

**I. Facts and Procedural History**

**{¶ 2}** Hilltop is the owner of real property at 2350-2354 West Broad Street, located in the Columbus City School District. On March 30, 2010, Hilltop filed a complaint with the BOR for tax year 2009, contesting the West Broad Street property's assessed valuation. In completing lines 1 through 4 on the complaint, Hilltop named "The Hilltop Commons, LLC" as the property owner and supplied contact information for the company and the company's agent. At line 6, Hilltop correctly identified the subject parcel number as 010-055631-00 and the address as 2350-2354 West Broad Street, Columbus, Ohio.

**{¶ 3}** Line 8 requested "[t]he increase or decrease in taxable value sought," and Hilltop this time listed the parcel number as 222-001524-00, its opinion of fair market value as $1,450,000, its opinion of taxable value as $507,500, the current taxable value as $594,370, and its requested change in taxable value as $86,870. All of Hilltop's responses in line 8 refer to a parcel located in the New Albany-Plain Local School District unrelated to the complaint.

**{¶ 4}** Line 9 asked for the reasons justifying the requested change, and Hilltop stated the property's building was more than 100 years old and lacked operating utilities, the interior had been neglected for 40 to 50 years, the immediate vicinity was home to a "[h]igh level of crime, drug trafficking and prostitution," and a demand for retail stores was lacking. Hilltop also cited sales of comparable distressed properties.

**{¶ 5}** Because of the mistake at line 8, the county auditor sent notification of Hilltop's complaint to the New Albany-Plain Local School District instead of the Columbus City School District. On May 26, 2010, appellee-appellee Columbus City School District Board of Education ("BOE"), nonetheless filed a timely counter-complaint seeking to maintain the auditor's assessed valuation. The BOE's counter-complaint utilized the same information as Hilltop's complaint at line 6, setting forth the parcel number as 010-055631-00 and address as 2350-2354 West Broad Street. At line 8, the BOE repeated the parcel number from line 6 and set forth at 8(A) a fair market value of

$105,000, at 8(B) a taxable value of $36,750, and at 8(C) the current taxable value of the property; at 8(D) the BOE requested no change be made in taxable value.

**{¶ 6}** On September 15, 2010, the BOR held a hearing on the matter. Counsel for the BOE, who later explained he happened to represent both the BOE and the New Albany-Plain Local School District Board of Education, stated he was at the hearing on behalf of the Columbus City School District and, "since the complaint also references a different parcel in a different district," on behalf of the New Albany-Plain Local School District as well. (Tr. 3.) Hilltop clarified that the property at issue was the West Broad Street parcel, located in the Columbus City School District, and admitted the values listed on line 8 had nothing to do with the West Broad Street property. With that, counsel for the BOE and the New Albany-Plain Local School District Board of Education moved to dismiss the complaint "under [*Stanjim Co. v. Bd. of Revision of Mahoning Cty.*, 38 Ohio St.2d 233 (1974)] in that the complaint was not properly filled out with regard to question 8." (Tr. 7.) The motion was entered in the record, but Hilltop was permitted to present its evidence regarding the subject property.

**{¶ 7}** The BOR reconvened on December 3, 2010 to issue its decision, agreed with the motion to dismiss, and dismissed Hilltop's complaint for lack of jurisdiction. The BOR explained that, "as line 8 incorrectly identifie[d] the parcel, columns A through D [were] incorrect," the mistakes went "to the core of procedural efficiency," and "the BOR lack[ed] jurisdiction to do anything other than dismiss this case." (Tr. 32.)

**{¶ 8}** Hilltop filed a notice of appeal to the Franklin County Court of Common Pleas on January 27, 2011, asserting the BOR erred in dismissing Hilltop's complaint for lack of jurisdiction; on August 31, 2011, Hilltop filed a motion seeking an order remanding the case to the BOR with instructions to render a decision on the merits. After the BOE and appellee-appellee Franklin County Auditor both filed responses, the common pleas court issued a decision and judgment entry on November 22, 2011, affirming the BOR's decision and agreeing that Hilltop's complaint is insufficient to invoke the BOR's jurisdiction.

## II. Assignments of Error

**{¶ 9}** Hilltop appeals, assigning the following errors:

Assignment of Error No. 1

The Trial Court Abused its Discretion by Sustaining the Board of Revision's Decision That Appellant's Complaint Against the Valuation of Real Property Was So Jurisdictionally Deficient That a Decision on the Merits Could Not be Made.

Assignment of Error No. 2

The Trial Court Abused its Discretion by Affirming the Board Of Revision's Decision Thereby Perpetrating the Denial to Appellant of Equal Protection Under Law as Guaranteed by Article I, § 2 of the Ohio Constitution.

## III. Standard of Review

**{¶ 10}** Subject-matter jurisdiction to hear and decide valuation complaints is conferred upon a BOR by statute, and is conditioned upon certain predicates that must be met. *Elkem Metals Co., Ltd. Partnership v. Washington Cty. Bd. of Revision*, 81 Ohio St.3d 683, 686 (1998). The jurisdictional sufficiency of a valuation complaint presents an issue of law. *Akron Centre Plaza, L.L.C. v. Summit Cty. Bd. of Revision*, 128 Ohio St.3d 145, 2010-Ohio-5035, ¶ 10, citing *Toledo Pub. Schools Bd. of Edn. v. Lucas Cty. Bd. of Revision*, 124 Ohio St.3d 490, 2010-Ohio-253, ¶ 14, fn. 2. Issues of law are reviewed de novo. *Toledo v. Levin*, 117 Ohio St.3d 373, 2008-Ohio-1119, ¶ 26, fn. 3.

## IV. First Assignment of Error

**{¶ 11}** Hilltop's first assignment of error asserts that, despite the mistakes in line 8, its complaint met the statutory requirements to invoke the BOR's jurisdiction.

A. *Jurisdiction of the BOR*

**{¶ 12}** As part of its jurisdiction to hear and rule on complaints, a Board of Revision must undertake a two step analysis: (1) "the board of revision must examine the complaint to determine whether it meets the jurisdictional requirements set forth by the statutes," and (2) "if the complaint meets the jurisdictional requirements, then the Board of Revision is empowered to proceed to consider the evidence and determine the true value of the property." *Elkem Metals* at 686.

**{¶ 13}** The Board of Revision's jurisdictional requirements are found in the statutory requirements of R.C. 5715.13 and 5715.19 for completing and filing a complaint to contest a real property valuation. *Id.*, citing *Stanjim* (holding the Board of Tax Appeals'

complaint form was a lawful interpretation of the minimum data requirements of R.C. 5715.19 and 5715.13). R.C. 5715.13(A) specifies that the Board of Revision cannot grant a property owner's request to decrease valuation unless the owner or the owner's agent "makes and files with the board a written application therefor, verified by oath, showing the facts upon which it is claimed such decrease should be made." R.C. 5715.19 addresses, among other things, the statutory rights and obligations of interested parties. Significant here, R.C. 5715.19(D) requires that where a property owner wishes to reduce the property's valuation, the complaint must "state the amount of overvaluation * * * upon which the complaint is based." R.C. 5715.19(B) requires the county auditor to notify the affected board of education if the stated amount of overvaluation is at least $17,500.

**{¶ 14}** If the complainant's submitted complaint form does not provide statutorily required information, "then the board of revision must dismiss it because the complaint has not invoked the board's power to proceed to a consideration of the merits." *Elkem Metals* at 686; *see also Stanjim*. Even so, not all questions on the form are designed to elicit statutorily required information, so that compliance with instructions merely procedural in nature is not necessary to invoke the Board of Revision's jurisdiction. *See Nucorp, Inc. v. Montgomery Cty. Bd. of Revision*, 64 Ohio St.2d 20 (1980) (determining requirement to file supplemental information within 45 days of the last day for filing the complaint is procedural, not jurisdictional). As *Nucorp* explained, "[w]hile this court has never encouraged or condoned disregard of procedural schemes logically attendant to the pursuit of a substantive legal right, it has also been unwilling to find or enforce jurisdictional barriers not clearly statutorily or constitutionally mandated, which tend to deprive a supplicant of a fair review of his complaint on the merits." *Id*. at 22.

**{¶ 15}** In identifying jurisdictional requirements with respect to the subject complaint form, courts should consider whether the particular information requested "run[s] to the core of procedural efficiency." *Akron Std. Div. of Eagle-Picher Industries, Inc. v. Lindley*, 11 Ohio St.3d 10, 12 (1984). " 'If the omitted requirement runs to the core of procedural efficiency, then the requirement is essential, the omission is not substantial compliance with the statute, and the appeal is to be dismissed.' " *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 80 Ohio St.3d 591, 596 (1998) (Moyer, C.J. and Sweeny, J., dissenting), quoting *Renner v. Tuscarawas Cty. Bd. of Revision*, 59 Ohio

St.3d 142, 144 (1991), citing *Akron Std. See also Nucorp* at 22 (contrasting procedural schemes "logically attendant" to the pursuit of a substantive legal right with procedural schemes "essential" to such a pursuit).

B. *Hilltop's Complaint – Property Misidentified*

**{¶ 16}** The first item of information required on line 8 is the parcel number for the property at issue. Here, Hilltop listed an incorrect parcel number on line 8 that identified property in another school district; its line 8 response contradicted its response in line 6, though line 6 listed the correct parcel number and correct address for that parcel. Hilltop claims the inconsistent parcel numbers are not fatal to its complaint because "the remainder of the complaint clearly identifies the subject property." (Emphasis deleted.) (Appellant's brief, at 3.) To support its claim, Hilltop cites several recent Board of Tax Appeals' cases that consider the jurisdictional impact of errors in identification information in a complaint.

**{¶ 17}** In *Bd. of Edn. of S. Euclid-Lyndhurst City School Dist. v. Cuyahoga Cty. Bd. of Revision*, BTA No. 2006-B-1302, 2009 Ohio Tax LEXIS 190 (Feb. 6, 2009), the South Euclid-Lyndhurst Board of Education filed a complaint with the Board of Revision, seeking an increase in a local property's valuation. The property owner filed a counterclaim contending the school board incorrectly listed the parcel number on the complaint, depriving the Board of Revision of jurisdiction over the case. At the Board of Revision hearing, the school board acknowledged the complaint mistakenly listed the parcel number at line 8, but "stated it was a 'typo' and that the property was properly identified in other locations of the complaint." *Id.* at *4. The Board of Tax Appeals noted, "line 6 of the complaint listed the correct parcel number as well as the address of the subject property" and concluded the line 6 information "rendered adequate notice to the parties as evidenced by [the property owner]'s counter complaint." *Id*.

**{¶ 18}** Similarly, in *Mount Vernon City School Dist. v. Knox Cty. Bd. of Revision*, BTA No. 2007-H-476, 2008 Ohio Tax LEXIS 569 (Mar. 25, 2008), the complainant inadvertently transposed two numbers in the subject property's parcel number at line 6. Noting it "previously held that errors in parcel numbers are not fatal to a complaint," the Board of Tax Appeals found the complaint " 'sufficiently identified the property in issue by referring to its address, the owner and the date on which it sold.' " *Id*. at *3-4, quoting

*Fogg Brooklyn Hts., LLC v. Cuyahoga Cty. Bd. of Revision*, BTA No. 01-K-47, 2002 Ohio Tax LEXIS 980 (May 24, 2002) (holding that because complaint listed the correct address, the owner and sell date for the property, the "mere fact that the parcel number did not correspond with the remainder of the information identifying the property in issue does not render the complaint defective"). *Id.* at *1; *see also Midview Local School Dist. Bd. of Edn. v. Lorain Cty. Bd. of Revision*, BTA No. 2006-Z-796, 2008 Ohio Tax LEXIS 1712 (Sept. 2, 2008) (concluding that, even though complaint listed wrong parcel number on both line 6 and line 8, complaint was not jurisdictionally defective where complaint properly identified the owner of property, address of property, and tax mailing address of property).

**{¶ 19}** Although Hilltop listed the subject property's correct parcel number and correct address elsewhere on the complaint, the county auditor used the line 8 parcel number to determine the property's corresponding school district. Because, as a result, the auditor notified the incorrect school board, the common pleas court distinguished the present case from Hilltop's cited Board of Tax Appeals' cases, noting here "the error does affect notice to the parties." (Decision, at 4.)

**{¶ 20}** The Board of Tax Appeals, however, has found inconsistencies in parcel numbers listed in lines 6 and 8 to be non-jurisdictional even when the error results in the auditor sending notice to the wrong school district. In *Dublin City School Dist. v. Franklin Cty. Bd. of Revision*, BTA No. 91-D-700, 1992 Ohio Tax LEXIS 186 (Feb. 28, 1992), the complainant property owner, Olde Sawmill Square Shopping Center, filed a complaint with the Franklin County Auditor requesting a valuation reduction on several of its properties. In response to what is now line 6 of the complaint, Olde Sawmill listed the intended five parcels, "all located on Sawmill Road in Dublin, Ohio" in the Dublin City School District. *Id*. at *2. In response to what is now line 8 of the complaint, Olde Sawmill listed five entirely different parcel numbers, "all located at Broad and High Streets in Downtown Columbus" in the Columbus City School District. *Id*. at *3. Relying on the latter, incorrect parcel numbers, the county auditor sent notice to the Columbus City School District, and the Columbus City School District Board of Education filed a counter-complaint reflecting the incorrect parcel numbers. *Id*. By then, however, Olde Sawmill had notified the Board of Revision of the mistake, though "after the authorized time for

the filing of an original complaint * * * but before the [school board's] Counter-Complaint was filed." *Id*. at *6.

**{¶ 21}** The Board of Revision issued a decision in favor of Olde Sawmill for the Sawmill Road parcels, and both school boards filed a joint motion claiming the Board of Revision's decision was invalid for lack of jurisdiction. *Id*. at *1-2. The issue before the Board of Tax Appeals was "whether the original complaint, which underlies the present case and therefore the attendant appeals (first to the Board of Revision and now to this Board) was and remains jurisdictionally defective, as a matter of law." *Id*. at *6. The Board of Tax Appeals observed that, although "[p]erfecting an appeal, pursuant to R.C. 5715.19, requires the use of the specified form * * * and the compliance with the rules, orders and instructions applicable thereto, * * * absolute perfection, in terms of perfecting every element specified on such a prescribed form is not necessarily a jurisdictional prerequisite." *Id*. *6-7, citing *Russell Twp. Bd. of Trustees v. Budget Comm*., 44 Ohio St.2d 8, 10 (1975); *Queen City Valves v. Peck*, 161 Ohio St. 579, 583 (1954); *Abex Corp. v. Kosydar*, 35 Ohio St.2d 13, 17 (1973). The Board of Tax Appeals decided "[t]he anticipated repeat of the parcel numbers in line [8], the same as reflected in line [6], of a complaint serves no statutory requirement or any critical or absolutely essential reporting form purpose and thus is not a jurisdictional prerequisite." *Dublin* at *7. Accordingly, the Board of Tax Appeals upheld the Board of Revision's decision and found the school board's motion to dismiss without merit. *Id*.

**{¶ 22}** The Board of Tax Appeals' decision in *Dublin* is consistent with the Supreme Court of Ohio's decision in *Knickerbocker Properties, Inc. XLII v. Delaware Cty. Bd. of Revision*, 119 Ohio St.3d 233, 2008-Ohio-3192. There, the school board filed a complaint asking for a valuation increase on a local property Knickerbocker recently purchased. The complaint correctly named Knickerbocker as the property owner but mistakenly listed the address of the property's prior owner for the owner's address, an address the county auditor used to issue statutory notice of the school board's complaint. The prior owner forwarded the notice to Knickerbocker, and Knickerbocker sent a letter to the Board of Revision requesting a continuance of the valuation hearing. The Board of Revision rescheduled the hearing but again sent the notice to the prior owner's address. No Knickerbocker representative appeared at the rescheduled hearing, and the Board of

Revision granted the school board's request for an increased property valuation based on the recent sale. In sending notice of its decision to Knickerbocker, the Board of Revision once more utilized the incorrect address.

**{¶ 23}** Learning of the Board of Revision's hearing and determination months later, Knickerbocker appealed to the Board of Tax Appeals, claiming the Board of Revision never obtained jurisdiction over the school board's complaint because of the address error and the subsequent failure to notify Knickerbocker "directly" of the hearing. The Board of Tax Appeals disagreed, holding the school board's complaint "complied with 'core jurisdictional requirements' by correctly naming the owner, the parcel number, and the basis for the value sought." *Id*. at ¶ 8.

**{¶ 24}** Although finding fault with other aspects of the Board of Revision's decision, the Supreme Court rejected Knickerbocker's jurisdictional argument, stating "[p]erhaps most significant is the fact that the statutes do not place the burden of providing proper notice to the property owner on the complainant. R.C. 5715.19(B) explicitly requires the auditor, not the complainant, to give notice of the filing of a complaint in particular situations." *Id*. at ¶ 12. In addition, just as R.C. 5715.12 requires the Board of Revision to notify the owner of a hearing before increasing their property's valuation, "R.C. 5715.13 requires the [Board of Revision] to notify other parties of a hearing before decreasing the valuation." *Id*. The complaint must contain enough information to sufficiently identify the property at issue so the auditor can fulfill the statutory notice obligations.

**{¶ 25}** Unlike *Knickerbocker*, the correct information was available here on the face of the complaint. In fact, of the three items on the complaint that directly pertain to identifying the property, being the parcel number and address at line 6 and the parcel number at line 8, two of the indicators were correct on Hilltop's complaint. *Cf., Ratner v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. No. 47991 (Nov. 15, 1984) (determining complaint did not confer jurisdiction on Board of Revision where "[t]here was no possible way of identifying the subject property from the face of the complaint"); *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 367 (2000) (concluding failure to notify property owner of valuation hearing deprived Board of Revision of jurisdiction where the school board filed a complaint listing an incorrect

person as the property owner). The cited cases thus suggest Hilltop's misidentifying the subject property's parcel number at line 8 alone does not prevent the BOR from invoking subject-matter jurisdiction over Hilltop's complaint.

C. *Hilltop's Complaint – Wrongly Stated Valuation*

**{¶ 26}** Hilltop, however, supplied other misinformation in the remainder of line 8 concerning valuation. Columns 8(A) through (C) request the complainant's opinion of true value, the complainant's opinion of taxable value, and the current taxable value, respectively. The information contained in 8(A), 8(B), and 8(C) provides the background figures from which the complainant derives the requested change in taxable value for column 8(D). Like the line 8 parcel number, Hilltop's responses to 8(A) through (D) all mistakenly pertain to an otherwise unrelated New Albany property.

**{¶ 27}** The cited cases permit information supplied on the complaint to fall short of being perfect, but "[w]hen a *statute* specifically requires a litigant to perform certain acts in order to invoke the jurisdiction of an administrative tribunal (or the jurisdiction of a court to review an administrative decision), the performance of such acts usually constitutes a prerequisite to the tribunal's jurisdiction." (Emphasis sic.) *Knickerbocker* at ¶ 10. *See also F & R Ltd. Partnership v. Bd. of Revision of Hamilton Cty.*, 1st Dist. No. C-970888 (Sept. 25, 1998) (noting that "[i]f the complaint does not meet the statutory jurisdictional requirements, it must be dismissed"), citing *Elkem Metals.*

**{¶ 28}** The information requested on line 8, and specifically at 8(D), pertains to two provisions of R.C. 5715.19 in particular. Line 8(D)'s request for the desired change in taxable value is relevant to R.C. 5715.19(D)'s requirement that the complaint "*shall state the amount of overvaluation* * * * upon which the complaint is based." (Emphasis sic.) *See Cleveland Elec.* at 598 (Moyer, C.J., dissent). In addition, information the complainant supplies in completing 8(D) is statutorily significant because the county auditor uses the information, pursuant to R.C. 5715.19(B), to determine whether the appropriate school district must be notified of the complaint, which is only necessary "should the amount of overvaluation exceed $17,500." *Cleveland Elec.* at 596.

**{¶ 29}** Hilltop's response failed to satisfy the stated statutory requirements of R.C. 5715.19(D). R.C. 5715.19(D) unequivocally requires the complainant to state the amount of overvaluation as to the parcel "upon which the complaint is based." Further, the

statute's use of the term "shall" denotes the nondiscretionary nature of the obligation. *See Jefferson Golf & Country Club v. Leonard*, 10th Dist. No. 11AP-434, 2011-Ohio-6829, ¶ 29 (noting the rules of statutory construction dictate that courts must apply the statute as written and should not add words to an unambiguous statute).

**{¶ 30}** Hilltop asserts its responses to 8(A) through (D) were jurisdictionally sufficient because the incorrect "$86,870" figure listed on its complaint was more than the $17,500 threshold amount. Relying on *Cleveland Elec.*, Hilltop contends "the instant Complaint created **no** confusion whether the County Auditor had a duty to notify the BOE of the Complaint—that is to say, the Complaint was sufficiently clear in terms of the County Auditor's duty to inform the BOE of the Complaint." (Emphasis sic.) (Appellant's brief, at 9.)

**{¶ 31}** In *Cleveland Elec.*, the Supreme Court of Ohio considered a complaint that responded to the current 8(A) and 8(B) by stating, "unknown at present," the current 8(C) by listing "figures ranging from $75,500 to $49,725,180," and the current 8(D) by stating, " 'decrease of at least $50,000.' " *Id.* at 592, 595. Examining the notice requirements contained in R.C. 5715.19(B), the court concluded a complaint must contain some disclosure of value that would serve to provoke the required action from a Board of Revision, and "[i]t is the triggering of that notice that goes to the very core of procedural efficiency." *Id*. at 597. The court determined the 8(D) "ceiling figure" substantially complied with the requirements of R.C. 5715.19(B) because the information was sufficient to trigger notice to the school board. *Id*. at 591.

**{¶ 32}** Hilltop similarly claims its erroneous response to 8(D) should be viewed as comparable to the "ceiling figure" in *Cleveland Elec.*, since it likewise exceeded the $17,500 threshold and triggered notice to the BOE. (Appellant's brief, at 7.) *Cleveland Elec.*, however, does not suggest a complaint is insufficient "only when a complainant frustrates the purpose of R.C. § 5715.19(B), by making it unclear 'whether notice to the school board is necessary.' " (Appellant's brief, at 8, quoting *Cleveland Elec.* at 597.) Before *Cleveland Elec.* considered "whether a ceiling figure upset[] the procedural efficiency of the tax appeal process," it considered whether the complainant's answers were responsive to the questions asked. *Id*. at 596.

**{¶ 33}** To determine the sufficiency of the complainant's answers concerning valuation, *Cleveland Elec.* noted the subject responses, while "somewhat vague," were not a "complete omission." *Id.* at 595. Further, combining the complaint's answers to 8(C) and (D), the court concluded that, "save [for] a few simple mathematic computations, [the complainant]'s opinion of true value was contained in its complaint." *Id.*

**{¶ 34}** By contrast, Hilltop's answers to 8(A) through (D) are non-responsive as to the subject property, so that determining the company's actual valuation claim from the information provided in the complaint is not possible. Hilltop acknowledged as much at the BOR's hearing, conceding that no indication of the correct requested change in value for the West Broad Street property can be ascertained "from the face of the complaint." (Tr. 5.)

**{¶ 35}** After considering whether the complainant's answers were responsive, *Cleveland Elec.* next considered whether the request for a " 'decrease of at least $50,000' " was "enough to satisfy the requirements of R.C. 5715.19(D)." *Id.* at 595. The court decided it was, reasoning no statutory provision required the complaint to set forth any specific value amount, so "a ceiling value fits within the requirements of R.C. 5715.19(D)." *Id.* at 596.

**{¶ 36}** By contrast, Hilltop failed to set forth the amount of overvaluation "upon which the complaint is based" in conformity with R.C. 5715.19(D). As a result, and despite Hilltop's assertions to the contrary, its response does not "make[] clear whether notice to the BOE is necessary." (Appellant's brief, at 8-9.) The face of the complaint discloses only that notice would have been necessary pursuant to the erroneous number given for the wrong parcel; the complaint does not demonstrate whether notice actually should have been given. A response that leads the auditor to send notification is not categorically sufficient to satisfy the statutory requirement; part of procedural efficiency is that the BOE does not need to be notified if the requested change is less than $17,500. Under Hilltop's logic, any response to 8(D) that triggers notification is sufficient to meet the statutory requirements, whether the actual requested change in taxable value would trigger that notification.

**{¶ 37}** Further, Hilltop never stated in its appeal whether the intended 8(D) change in taxable value was over $17,500. As a result, even though Hilltop argues its

erroneous 8(D) figure was sufficient because it triggered notice to the BOE, whether the true figure would have triggered such notice at all is unclear. The only place in the record where Hilltop referred to the intended line 8 values is at the BOR hearing. When asked what value it was seeking for the parcel, the Hilltop attorney stated the company was "seeking a value of $20,000." (Tr. 7.) Even then, whether Hilltop intended that figure to be the intended total value, the taxable value, or the valuation change is not clear.

**{¶ 38}** In context, Hilltop seemed to be requesting the total value of the property be reduced from approximately $105,000 to $20,000. If that were Hilltop's intent, the requested change in taxable valuation never was addressed at the hearing. If, instead, Hilltop meant it was trying to request a decrease in taxable value to $20,000, then the requested change in taxable value would not meet or exceed $17,500, as the present taxable value of the property is $36,000. (R. 23.)

**{¶ 39}** Hilltop's line 8 information, in the end, is not comparable to that considered in *Cleveland Elec.* Since the given information is non-responsive as to the West Broad Street property, Hilltop's complaint essentially omits the requested line 8 information. Where a complaint omits a response to 8(D), the auditor will be unable to know whether he should inform the school board of a complainant's claim under R.C. 5715.19(B). *Cleveland Elec.* at 597.

**{¶ 40}** The Board of Tax Appeals also has held a complaint jurisdictionally insufficient when it fails to provide responsive answers to line 8. In *Bd. of Edn. for the Northridge Local School Dist. v. Montgomery Cty. Bd. of Revision*, BTA No. 2010-V-421, 2010 Ohio Tax LEXIS 1337 (Aug. 3, 2010), the complaint failed to state any requested change in value for the subject property, leaving line 8 blank. The Board of Tax Appeals held that the "information that is requested in paragraph 8 of the complaint is a requirement that goes to the core of procedural efficiency" pursuant to R.C. 5715.19(D), and the complainant therefore "failed to establish jurisdiction before the [Board of Revision]." *Id.* at *3, 4. *See also Field v. Champaign Cty. Bd. of Revision*, BTA No. 2000-P-2077, 2001 Ohio Tax LEXIS 1593 (Oct. 5, 2001) *3 (concluding the complainant's failure to fill in any information in question 8 of the complaint, regarding the increase or decrease in value sought, ran to the "core of procedural efficiency" and deprived the Board of Revision of jurisdiction over the case); *Heskett v. Ross Cty. Bd. of Revision*, BTA No.

2006-V-904, 2008 Ohio Tax LEXIS 684 (Apr. 8, 2008) *7, 8 (determining that where complaint contained "no claim as to the valuation or change in value sought," the information provided was insufficient to prompt the Board of Revision's notice obligation, the omission ran "to the core of procedural efficiency and deprive[d] the [Board of Revision] of jurisdiction over the complaint"). Similarly, Hilltop's using an unrelated amount for the desired change in taxable valuation in reality was an omission going to the core of procedural efficiency.

**{¶ 41}** Hilltop nonetheless claims the BOR could exercise jurisdiction regardless of the errors in its complaint since the BOE received notice of the complaint, filed a timely counter-complaint, and appeared at the hearing. Even if we assume Hilltop is correct that its mistakes did not prejudice the Columbus City School District BOE, the BOR nonetheless lacked jurisdiction to proceed with a merit hearing since Hilltop's non-responsive answer to 8(D) failed to provide statutorily required overvaluation information regarding the West Broad Street property. Because of this error, the BOR never acquired subject-matter jurisdiction over Hilltop's claim. *IBM Corp. v. Franklin Cty. Bd. of Revision*, 10th Dist. No. 06AP-108, 2006-Ohio-6258 (finding a complaint's compliance with R.C. 5715.19 and 5715.13 is necessary before a county Board of Revision obtains subject-matter jurisdiction).

**{¶ 42}** The issue of subject-matter jurisdiction involves " 'a court's power to hear and decide a case on the merits and does not relate to the rights of the parties.' " *Fogelman v. Stoyer*, 10th Dist. No. 11AP-281, 2011-Ohio-5887, ¶ 15, quoting *Vedder v. Warrensville Hts.*, 8th Dist. No. 81005, 2002-Ohio-5567, ¶ 14. Although a party's voluntary appearance before the tribunal can waive an irregularity in personal jurisdiction, "the lack of subject matter jurisdiction is not waivable." *State v. James*, 10th Dist. No. 11AP-246, 2011-Ohio-6457, ¶ 14, citing *In re King* 62 Ohio St.2d 87 (1980); *Asset Acceptance L.L.C. v. Allen*, 9th Dist. No. 24676, 2009-Ohio-5150, ¶ 3. *See also Ohio Consumers' Counsel v. Pub. Util. Comm.*, 127 Ohio St.3d 524, 536, 2010-Ohio-6239 (holding "it is well established that jurisdictional deficiencies in administrative proceedings cannot be waived") citing *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229 (1996). Because Hilltop's complaint failed to invoke the BOR's subject-matter

jurisdiction, the BOR did not possess the power to determine the claim on its merits, and any question of prejudice is not dispositive.

**{¶ 43}** Lastly, the BOE's counter-complaint filed pursuant to R.C. 5715.19(B) did not create independent jurisdiction in the BOR because Hilltop's original complaint is jurisdictionally defective. *C.I.A. Properties v. Cuyahoga Cty. Auditor*, 89 Ohio St.3d 363, 365 (2000). Where a complaint is determined to be jurisdictionally defective and is thereby dismissed, the subject matter that prompted the complaint is no longer subject to review by a Board of Revision and, as a result, "there is no controversy to be addressed by the counter-complaint." *Id*. at 366.

**{¶ 44}** Because the BOR properly found it lacked subject-matter jurisdiction to decide Hilltop's claim on its merits, Hilltop's first assignment of error is overruled.

**V. Second Assignment of Error**

**{¶ 45}** Hilltop's second assignment of error contends it was denied equal protection under the law when the BOR dismissed its complaint for lack of jurisdiction.

**{¶ 46}** The common pleas court found that the BOR did not have subject-matter jurisdiction over Hilltop's complaint, so that the board's actions "in other cases are simply not relevant to this determination. Even inconsistent actions by the Board in other cases would not alter or enlarge the subject-matter jurisdiction of the Board as defined by the above legal authority." (Decision, at 4.)

**{¶ 47}** Hilltop, however, asserts the BOR "does not uniformly apply the law to all similarly situated parties," and "[t]his case involves a quintessential example of an administrative board expressly treating one property owner differently than another similarly situated property owner" with no rational basis for this dissimilar treatment. (Appellant's brief, at 13, 11.) To support its contentions, Hilltop presents its findings from a self-conducted survey of one thousand of the eight thousand cases filed with the Franklin County Auditor in 2010. (*See* Appellant's brief, Appendix 3.) Hilltop asserts that "[e]ven though only about 12% of the total complaints were reviewed, one hundred twenty-seven (127) of the complaints contained were either incomplete or wrong when it came to listing the parcel number or value information, or both." (Footnote deleted.) (Appellant's brief, at 12.)

**{¶ 48}** The right to equal protection of the law is required by the Fourteenth Amendment to the U.S. Constitution and Ohio Constitution, Article I, Section 2. *McCrone v. Bank One Corp.*, 107 Ohio St.3d 272, 2005-Ohio-6505, ¶ 6-7. If a law, though fair on its face, is applied so as " 'to make unjust and illegal discriminations between persons in similar circumstances, material to their rights,' there is a denial of equal protection." *State v. Flynt*, 63 Ohio St.2d 132, 134 (1980), quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 373-74 (1886). Even so, "[t]he comparison of only similarly situated entities is integral to an equal protection analysis," and the Equal Protection Clause " 'does not require things which are different in fact * * * to be treated in law as though they were the same.' " *GTE N., Inc. v. Zaino*, 96 Ohio St.3d 9, 2002-Ohio-2984, ¶ 22, quoting *Tigner v. Texas*, 310 U.S. 141, 147 (1940).

**{¶ 49}** Here, Hilltop presents no basis to determine whether the cases it discusses involve circumstances in which a party raised a jurisdictional challenge to the errors in the complaint like those at issue here. Accordingly, Hilltop has not established it is similarly situated to the other complainants cited, and its second assignment of error is overruled.

**VI. Disposition**

**{¶ 50}** Having overruled Hilltop's two assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BROWN, P.J., and DORRIAN, J., concur.