

IN THE SUPREME COURT OF OHIO

**State ex rel.** :  
**The City of Lorain, Ohio, et al.** :  
Relators, : Case No. 07-2289  
v. : Original Action in Mandamus  
**Mark R. Stewart** :  
Respondent. :

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**RELATORS' MERIT BRIEF  
IN SUPPORT OF MANDAMUS**

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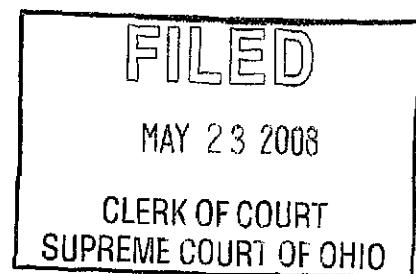
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## INTRODUCTION

The Ohio General Assembly has vested legislative authority in Ohio cities to create Community Reinvestment Areas (“CRAs”). See R.C. § 3735.65 *et seq.* (“the CRA statute”). A CRA is an area of land for which property owners can receive tax incentives for improving existing properties or constructing new structures. The CRA program enables cities to designate areas as CRAs, and to grant CRA tax exemptions, in order to encourage economic revitalization and development.

This is an original action for a writ of mandamus to compel respondent, Lorain County Auditor, Mark R. Stewart, to fulfill his mandatory, ministerial duty to place 355 properties on the county’s tax-exempt list because they were granted CRA tax exemptions by relators, the City of Lorain and its housing officer.

Relators have demonstrated all of the required elements for mandamus relief:

First, relators have a clear legal right to have the 355 CRA tax exemptions recognized by the county auditor and placed on the county’s tax exempt list. The CRA statute vests authority in Ohio cities to create CRAs and to determine the size, number, and tax-exempt characteristics of CRAs within their jurisdiction. R.C. 3735.65 *et seq.* As members of this Court have already recognized, the CRA statute outlines the “exclusive procedure for the granting and revocation of [CRA] exemptions.” *Gahanna-Jefferson Local Sch. Dist. Bd. of Educ. v. Zaino* (2001), 93 Ohio St.3d 231, 239 (Moyer, C.J., dissenting, with Lundberg Stratton and Sweeney, JJ., joining in dissent) (emphasis added). The CRA statute makes clear that a city’s housing officer has exclusive authority to grant CRA tax exemptions. R.C. 3735.67(B). Similarly, city officials have exclusive authority to revoke CRA exemptions. The revocation of CRA exemptions for residential properties is controlled by the housing officer, and the

revocation of CRA exemptions for commercial properties is controlled by the city's legislative authority. R.C. 3735.68.

Second, respondent Stewart has a clear legal duty to place the 355 properties on the exempt list. The county auditor is a creature of statute and therefore possesses only such powers as are conferred by statute. Moreover, this Court has long recognized that a county auditor is a ministerial officer, and that the obligation to place items on tax-related lists, which includes tax-exempt lists, is a ministerial duty. Pursuant to the CRA statute, the city's housing officer – not the county auditor – has the exclusive authority to grant CRA tax exemptions. See R.C. 3735.67(B) ("The housing officer shall determine whether the construction or the cost of the remodeling meets the requirements for an exemption") (emphasis added). Similarly, city officials have exclusive authority to revoke CRA exemptions. See R.C. 3735.68 (revocation of CRA exemptions for residential properties is controlled by housing officer, and revocation of CRA exemptions for commercial properties is controlled by city's legislative authority).

In short, the General Assembly has given the county auditor no role in deciding whether a CRA tax exemption should be granted or revoked. Pursuant to R.C. 3735.67(C), once the housing officer grants a CRA tax exemption, he forwards the exemption application and certification to the county auditor who, pursuant to R.C. 5713.08(A), must place the properties on the tax exempt list. R.C. 5713.08(A) ("The county auditor shall make a list of all real and personal property in the auditor's county . . . which is exempted from taxation."). Accordingly, respondent Stewart has a clear legal duty to place on the county's tax exempt list the 355 CRA properties that were certified as exempt by the City of Lorain's housing officer.

Lastly, relators have no adequate remedy at law. This Court has repeatedly recognized mandamus as the proper form of action to compel a county auditor to perform his ministerial

duties. Although there are certain consolidated actions pending in the Lorain County Court of Common Pleas related to Lorain's CRA exemptions, none of these proceedings is proper at all, let alone a proper proceeding for challenging the auditor's refusal to place the CRA properties on the tax exempt list. The first action is a declaratory judgment action that was filed by the Lorain County Commissioners against the city, and which also names the county auditor and others as defendants. But that action is invalid, because all challenges to CRA tax exemptions must be raised through the special statutory proceedings described in the CRA statute. See R.C. 3735.67(E) & 3735.70. As this Court has repeatedly held, special statutory proceedings cannot be bypassed through an action for declaratory judgment. The second action is an R.C. 2506.01 administrative appeal that was filed by the city against the auditor, and which challenges the auditor's refusal to place the CRA properties on the county's tax exempt list. But that administrative appeal is also an inadequate remedy because respondent Stewart's refusal to list the properties did not involve quasi-judicial proceedings, as is required for administrative appeals under R.C. 2506.01. Accordingly, and as all parties agree, the auditor's refusal to list the properties is not justiciable through an R.C. 2506.01 administrative appeal.

In short, without mandamus, the auditor and countless other public officials will claim the right to interpret the law for themselves, disregard proper procedures for airing their alleged concerns, and flout their mandatory and ministerial duties accordingly. A declaratory judgment action or administrative appeal can in no way remedy that problem.

In the current economy, with foreclosures on the rise, the auditor's refusal to place properties certified as exempt on the exempt list -- and his failure to raise any purported challenges to the exemptions through the proper proceedings -- eviscerates Lorain's community

development program, causes significant harm to property owners, and has the potential to significantly increase foreclosures in the city.

For all of these reasons and for the reasons discussed below, this Court should issue a writ of mandamus to compel respondent Stewart to place on the county's tax exempt list the 355 CRA properties that were certified as exempt by the City of Lorain's housing officer.

## STATEMENT OF FACTS

For more than 30 years, the Ohio General Assembly has vested Ohio cities with the right to create Community Reinvestment Areas (“CRAs”). A CRA is an area of a city within which property owners can receive tax incentives for improving existing properties or constructing new structures. See R.C. 3735.65 *et seq.* (“the CRA statute”) (attached hereto at Appx. 1).

Pursuant to the CRA statute, Relator, the City of Lorain, has created five Community Reinvestment Areas (they are called simply: CRA 1, CRA 2, CRA 3, CRA 4, and CRA 5). (Agreed Statement of Facts ¶¶5-8.)<sup>1</sup> As is true across Ohio, Lorain’s CRA program is the bedrock of the city’s urban renewal efforts and the principal mechanism for encouraging economic revitalization and development in those areas of the city where such revitalization and development is needed and desired. (Relators’ Evidence 1-2, Goldberg Aff. ¶3).<sup>2</sup>

### **I. The City of Lorain’s CRA Program**

The city created its CRAs between 1980 and 1990 through a series of resolutions and ordinances, as prescribed by the CRA statute. See R.C. 3735.66. In 1980, the city established CRAs 1 and 2 through Res. No. 51-80, *amended at* Res. No. 19-06. (Agr. St. ¶7 & Exh. 3.) In 1985, the city established CRA 3 through Ord. No. 179-85, *amended at* Ord. No. 127-88 and 52-06. (Agr. St. ¶5 & Exh. 1.) In 1989, the city established CRA 4 through Ord. No. 178-89, *amended at* Ord. No. 53-06. (Agr. St. ¶6 & Exh. 2.) Finally, in 1990, the city established CRA 5 through Ord. No. 122-90, *amended at* Ord. No. 54-06. (Agr. St. ¶8 & Exh. 4.)

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<sup>1</sup> Citations to the parties’ Agreed Statement of Facts are hereafter noted as “Agr. St. \_\_\_\_.”

<sup>2</sup> Citations to Relators’ Evidence are hereafter noted as “RE \_\_\_\_,” followed by a description of the evidence being cited.

Prior to 2006, the city's five CRAs were not uniform in terms of the characteristics of CRA tax exemptions that were granted for new construction in each area.<sup>3</sup> (Agr. St., Exhs. 1, 2, 3, & 4; RE 2, Goldberg Aff. ¶8.) The legislation for CRAs 1, 2, and 5 provided for a 15-year, 100% tax exemption for new construction. See Res. No. 51-80, Sec. III(c) & Ord. No. 122-90, Section 3(c) (Agr. St. Exhs. 3 & 4.) Meanwhile, the legislation for CRAs 3 and 4 provided for a one-year, 50% tax exemption for new construction, or allowed the city and property owner to contractually agree to different terms pursuant to R.C. 3735.67, which provided for a 100% exemption for up to 15 years. See Ord. No. 127-88, Sec. 3 & Ord. No. 178-89, Sec. 3 (Agr. St. Exhs. 1 & 2.)

In April 2006, the city amended the CRA legislation for each of the five CRAs. See Res. No. 19-06 (amending CRAs 1 and 2); Ord. No. 52-06 (amending CRA 3); Ord. No. 53-06 (amending CRA 4); and Ord. No. 54-06 (amending CRA 5) (Agr. St. ¶9 & Exhs. 1, 2, 3, & 4.)

The purpose of the 2006 amendments, as expressly stated in the amended legislation for each of the CRAs, was "to establish a uniform procedure in all Community Reinvestment Areas" for CRA tax exemptions. (Id.) Accordingly, the 2006 amendments to CRAs 3 and 4 eliminated the option of a one-year, 50% exemption or a different, contractually agreed-upon exemption that had previously been available in CRAs 3 and 4. Instead, the 2006 amendments established the same, uniform procedure for CRA tax exemptions in each of Lorain's five CRAs. The new procedure includes the execution of a CRA agreement with the city and approval from the City Council Committee on Tax Incentives. (Id.)

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<sup>3</sup> Only tax exemptions for new construction (as opposed to property improvements) are at issue in this case. Accordingly, guidelines for exemptions relating to property improvements are not relevant and will not be discussed here.

About eight weeks later, in June 2006, the city passed Ord. No. 93-06, which details the uniform procedure for CRA exemptions that was established through the 2006 amendments to CRAs 1, 2, 3, 4, and 5. (Agr. St. Exh. 5; RE 14-90.) Ordinance No. 93-06 is an umbrella ordinance that covers the city's entire CRA program. Included in Ord. No. 93-06 are the model, uniform agreements for CRA exemptions adopted by the city council for new construction in each of the city's five CRAs. See Ord. No. 93-06, "Section 6" and "Section 7" (Agr. St. Exh. 5; RE 77-90.) The agreements establish a 15-year, 100% real property tax exemption for new construction. (Id.)

In short, pursuant to the uniform procedure established by the April 2006 amendments and Ord. No. 93-06, the CRA tax exemption granted for construction in all of the city's CRAs is now a 15-year, 100% real property tax exemption. (Id.; RE 4, Goldberg Aff. ¶ 13.)

## **II. Administration of the CRA Program**

The CRA statute provides that the city's housing officer is responsible for granting CRA tax exemptions. See R.C. 3735.66 (each legislative authority adopting a CRA ordinance "shall designate a housing officer"); R.C. § 3735.67(B) ("The housing officer shall determine whether the construction or the cost of the remodeling meets the requirements for an exemption."). Similarly, the revocation process resides exclusively in the hands of city officials. The revocation of CRA exemptions for residential properties is controlled by the housing officer, and the revocation of CRA exemptions for commercial properties is controlled by the city's legislative authority. R.C. 3735.68.

Relator, Drake Hopewell, is currently the housing officer for the city. (Agr. St. ¶3.) He was appointed on January 14, 2008. (Id.) Michael T. Kobylka II was the city's housing officer from October 1, 2006 until November 5, 2007. (Id.)

Pursuant to the CRA statute, property owners within a CRA can apply to a city's housing officer for an exemption from taxation for eligible construction or improvements. R.C. 3735.67(A). Under R.C. 3735.67(B), the housing officer "shall verify the construction of the new structure or the cost of the remodeling and the facts asserted in the application." After that, "[t]he housing officer shall determine whether the construction or the cost of the remodeling meets the requirements for an exemption." Id.

The CRA statute then provides that, if the construction or remodeling meets the requirements for exemption, "the housing officer shall forward the application to the county auditor with a certification as to the division of this section under which the exemption is granted." R.C. 3735.67(C). For CRAs created before July 1, 1994 and whose legislation has not been amended more than twice, the certification must show the period of the exemption. For CRAs created after July 1, 1994, or whose legislation has been amended more than twice, the certification must show both the period of the exemption and the percentage of the exemption.<sup>4</sup>

Once the housing officer completes the certification and forwards it to the county auditor, the county auditor has the ministerial duty of placing the property on the county's tax exempt list. The auditor's duty is grounded in R.C. 5713.08(A), which states that the county auditor "shall make a list of all real and personal property in the auditor's county . . . which is exempted from taxation."

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<sup>4</sup> The distinction is due to a "grandfathering" clause in the bill that amended R.C. 3735.67 in 1994. (S.B. 19). Pursuant to S.B. 19, for CRAs that were established before July 1, 1994 and whose legislation has not been amended more than twice after July 1994, the pre-1994 version of R.C. 3735.67 controls the procedure for exempting CRA properties from taxation. (Copies of S.B. 19 and the pre-1994 version of R.C. 3735.67 are attached hereto at Appx. 2). In all respects relevant to this action, however, the exemption procedures set forth in the pre-1994 version of R.C. 3735.67 are the same as the procedures set forth in the current version of the statute.

Respondent, Mark R. Stewart, is the Lorain County Auditor and therefore is obligated to list the properties granted CRA tax exemptions by housing officers in Lorain County.

**III. Lorain's Certification of 355 Properties in CRAs 3 and 4 as Tax Exempt and Respondent Stewart's Refusal to Place the Properties on the Tax Exempt List**

Between December 12, 2006 and July 19, 2007, the city's housing officer, who was Mr. Kobylka at the time, determined that 355 properties in CRAs 3 and 4 met the requirements for exemption for new construction under the CRA statute and the city's CRA ordinances. (Agr. St. ¶11 & Exh. 6; RE 4, Goldberg Aff. ¶14.)

Pursuant to R.C. 3735.67(C), Mr. Kobylka forwarded to respondent Stewart the applications and certifications for the 355 properties that Mr. Kobylka deemed exempt, for placement on the county's tax exempt list. (RE 4-5, Goldberg Aff. ¶¶14, 17-20.) All of the certifications reflected a 15-year, 100% real property tax exemption, pursuant to Ord. No. 93-06. (RE, 5, Goldberg Aff. ¶20.)

In early 2007, the city learned that respondent Stewart was refusing to place these exempted properties on the county's tax exempt list. (RE 5, Goldberg Aff. ¶18.) Throughout the spring, the city forwarded materials to Stewart, including all of the CRA ordinances, demonstrating the city's legal authority to grant the CRA tax exemptions. (RE 5-6, Goldberg Aff. ¶¶20-21.) The city also submitted or resubmitted certifications for all of the properties, showing that each exemption was a 100%, 15-year exemption. (RE 5-6, Goldberg Aff. ¶¶20-21.)

On August 16, 2007 and October 18, 2007, respondent Stewart sent letters to the 355 property owners in CRAs 3 and 4 to whom the city had granted CRA exemptions between December 12, 2006 and July 19, 2007, stating that he would not place their properties on the tax exempt list. (Agr. St. ¶12.) Exhibit 7 to the parties' Agreed Statement of Facts contains an

accurate copy of the letter Stewart sent to the property owners. (Agr. St. ¶12 & Exh. 7; RE 139, Georgas Aff. ¶¶9-10.)

The 355 properties in CRAs 3 and 4 that are at issue in this case are currently not on the tax exempt list for Lorain County, and thus real property tax is being charged against these properties. (RE 6, Goldberg Aff. ¶23; RE 139, Georgas Aff. ¶¶9-12.)

## ARGUMENT

Respondent Stewart's refusal to perform his mandatory, ministerial duty of placing CRA exemptions on the county's tax-exempt list makes this a paradigmatic case for mandamus. As this Court has repeatedly recognized, "[t]he basic purpose of the writ of mandamus is to compel a public officer to perform the duties imposed upon him by law." *State ex rel. Scott v. Masterson* (1962), 173 Ohio St. 402, 404, 183 N.E.2d 376.

Mandamus is proper where: (1) the relators have a clear legal right to the relief requested; (2) the respondent has a clear legal duty to perform the requested acts; and (3) the relators have no plain and adequate remedy in the ordinary course of the law. *State ex rel. Gen. Motors Corp. v. Indus. Comm'n* (2008), 117 Ohio St.3d 480, 2008-Ohio-1593, 884 N.E.2d 1075, ¶9.

In this case, relators seek to compel a public officer, the Lorain County Auditor, to perform the duties imposed upon him by law, and relators have properly demonstrated all of the required elements for mandamus relief.

### **I. Relators Have a Clear Legal Right to Have the 355 CRA Properties Certified as Exempt Placed on the County's Tax Exempt List**

It is well settled that municipal corporations, townships, and their officers are entitled to mandamus relief to vindicate their exercise of legislative grants of authority. See, e.g., *State ex rel. Toledo v. Lucas Cty. Bd. of Elections*, 95 Ohio St.3d 73, 2002-Ohio-1383, 765 N.E.2d 854 (city had right to mandamus relief to compel county board of elections to hold special election to fill city council vacancy; county's refusal to hold special election impinged city's attempt to enforce its voter-approved charter provisions concerning filling council vacancies); *State ex rel. Sinay v. Sodders* (1997), 80 Ohio St.3d 224, 685 N.E.2d 754 (township and its board of trustees had right to mandamus relief to compel city clerk and director of finance to

transmit municipal initiative petition to county board of elections and to certify validity of petition; failure to transmit petition and certify its validity would injure township and its board by nullifying their agreement to create a joint fire and ambulance district, which was the subject of the initiative petition); *State ex rel. City of Cleveland Heights v. Cuyahoga Metro. Hous. Auth.* (1990), 50 Ohio St.3d 47, 553 N.E.2d 249 (where statute gave city authority to make an appointment to the metropolitan housing authority board, city and city's appointee had legal right to mandamus relief against housing authority to order authority to seat the city's appointee as a member of the board).

Relators' clear legal right to create Community Reinvestment Areas and to grant CRA tax exemptions is grounded in the CRA statute, R.C. 3735.65 *et seq.* Section 3735.66 vests legislative authority in municipal corporations to create CRAs and to determine the size, number, and tax-exempt characteristics of CRAs within their jurisdiction.

The CRA statute authorizes the housing officer of the municipal corporation to administer CRA tax exemptions. See R.C. 3735.66 (each legislative authority adopting a CRA resolution "shall designate a housing officer"); R.C. 3735.67(B) (stating that the housing officer shall determine whether exemption requirements have been met). The CRA statute makes clear that it is the housing officer who determines whether a CRA tax exemption should be granted:

The housing officer shall determine whether construction or the cost of the remodeling meets the requirements for an exemption.

R.C. 3735.67(B) (emphasis added). City officials also have exclusive authority to revoke CRA tax exemptions. For residential properties:

The housing officer shall make annual inspections of the properties within the community reinvestment area.... If the housing officer finds that the property has not been properly maintained or repaired

due to the neglect of the owner, the housing officer may revoke the exemption at any time after the first year of exemption.”

R.C. 3735.68 (titled “Revocation of tax exemption”) (emphasis added). For commercial properties, the city’s legislative authority has the power to revoke CRA exemptions.<sup>5</sup> R.C. 3735.68.

The CRA statute, R.C. 3735.65 *et seq.*, confers no authority on the county auditor to review applications for CRA exemptions, to determine the validity of a housing officer’s grant of a CRA tax exemption, or to refuse to list CRA exemptions granted by the housing officer. The CRA statute, which “outline[s] the exclusive procedure for the granting and revocation of [CRA] exemptions,” assigns no role whatsoever to the county auditor in CRA exemption or revocation decisions. *Gahanna-Jefferson*, 93 Ohio St.3d 231 at 239 (Moyer, C.J., dissenting, with Sweeney and Lundberg Stratton, JJ., joining in dissent) (emphasis added). Indeed, in 2003, the General Assembly clarified and amended the CRA statute to affirm the views expressed by Chief Justice Moyer and Justices Sweeney and Lundberg Stratton in their dissent in *Gahanna-Jefferson*, and to correct the majority’s differing apprehension about the nature of the CRA program. The amendments clarified that the CRA program, in its entirety, is a self-contained program administered at the local level, and that even challenges to CRA exemptions are to be considered first by the housing officer and other local officials pursuant to the prescribed statutory process. See H.B. 95 (2003); R.C. 3735.67(E).

Pursuant to R.C. 5713.08(A), the county auditor’s lone and mandatory duty is to place on the exempt list those properties certified as exempt by the city’s housing officer. R.C.

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<sup>5</sup> R.C. 3735.68 also gives revocation power to the county’s legislative authority, but only in CRAs that were created by the county – which is not the case here. This case pertains only to CRAs created by the City of Lorain and thus, pursuant to R.C. 3735.68, only city officials have the power to revoke CRA tax exemptions.

5713.08(A) (the auditor “shall make a list of all real and personal property in the auditor’s county . . . which is exempted from taxation.”) (emphasis added).

Here, the City of Lorain passed resolutions creating CRA 3, in 1985, and CRA 4, in 1989. Between, December 18, 2006 and July 19, 2007, the City of Lorain’s housing officer, who was Mr. Kobylka at the time, determined that 355 properties in CRAs 3 and 4 met the requirements for exemption under R.C. § 3735.65 *et seq.*, and the CRA ordinances, including Ord. No. 93-06.

Pursuant to R.C. 3735.67(C), the city forwarded to the auditor CRA applications and certifications for all 355 properties at issue, indicating that each exemption was a 15-year, 100% exemption. But for Respondent Stewart’s actions, these exemptions would already have gone into effect.

In short, the city and its housing officer have a clear legal right to vindication of the actions they have taken pursuant to statutory grants of authority. See *State ex rel. Toledo*, 95 Ohio St.3d 73; *Sodders*, 80 Ohio St.3d 224; *State ex rel. City of Cleveland Heights*, 50 Ohio St.3d 47. The authority to create CRAs and to grant CRA tax exemptions are the exclusive and statutorily created rights of the city. Accordingly, relators have a clear legal right to have the 355 CRA properties placed on the Lorain County exempt list.

## **II. Respondent Stewart Has a Clear Legal Duty to Place the 355 Properties on the Exempt List**

Because the county auditor is a creature of statute, respondent Stewart possesses only such powers as are conferred by statute. See R.C. 319.01 *et seq.* (creating position of county auditor); *Cincinnati Sch. Dist. Bd. of Educ. v. Hamilton County. Bd. of Revision*, 87 Ohio St.3d 363, 367-68, 2000-Ohio-452, 721 N.E.2d 40 (position or entity that is a creature of statute “is limited to the powers conferred upon it by statute”); *Pike Natural Gas Co. v. Public Util.*

*Comm'n of Ohio* (1981), 68 Ohio St.2d 181, 183, 429 N.E.2d 444, 445 (entity created by statute “may exercise no jurisdiction beyond that conferred by statute.”).

Moreover, this Court has long recognized that a county auditor is a “ministerial officer” and that the obligation to place items on tax-related lists, including exempt lists, is “a mere ministerial duty.” See *State ex rel. Donahey v. Roose* (1914), 90 Ohio St. 345, 350, 107 N.E. 7600 (county auditor’s duty to place on the tax lists the rate required for state purposes, as certified to him by the state auditor pursuant to Gen. Code 5626, was a ministerial duty and would be enforced through mandamus).

As members of this Court have recognized, the CRA statute “provides detailed, specific procedures for the application, administration, and revocation of tax exemptions for property in a CRA. . . . [The CRA statute] outline[s] the exclusive procedure for the granting and revocation of [CRA] exemptions.” *Gahanna-Jefferson*, 93 Ohio St.3d at 239 (Moyer, C.J., dissenting and joined by Sweeney and Lundberg Stratton, JJ.)

Pursuant to R.C. 3735.67(B), the housing officer – not the county auditor – has the exclusive authority to grant CRA tax exemptions. R.C. 3735.67(B) (“The housing officer shall determine whether the construction or the cost of the remodeling meets the requirements for an exemption.”). Pursuant to R.C. 3735.67(C), once the city’s housing officer determines that a property owner qualifies for a CRA exemption, and duly grants that exemption, the housing officer forwards the exemption application and certification to the county auditor, who, pursuant to R.C. 5713.08(A), must place the properties certified as exempt on the exempt list:

The county auditor shall make a list of all real and personal property in the auditor’s county.... which is exempted from taxation.

R.C. 5713.08(A) (emphasis added). The word “shall” makes clear that the auditor’s duty to list exempted properties is mandatory. See *Ohio Civil Rights Comm'n v. Countrywide Home*

*Loans, Inc.*, 99 Ohio St.3d 522, 2003-Ohio-4358, 794 N.E.2d 56, at ¶ 4 (“[T]he word ‘shall’ shall be construed as mandatory unless there appears a clear legislative intent that [it] receive a construction other than [its] ordinary usage.”).

In addition to conferring exclusive authority on the city to grant CRA exemptions, the CRA statute confers exclusive authority on the city to revoke CRA exemptions. Under R.C. 3735.68, which is titled “revocation of tax exemption,” the housing officer – not the county auditor – has the power to revoke CRA exemptions for residential properties “if the housing officer finds that the property has not been properly maintained or repaired due to the neglect of the owner.” If the property is commercial or industrial, the city’s legislative authority may revoke the exemption if it finds that (1) the owner has “materially failed to fulfill its obligations” under the written agreement entered into pursuant to R.C. 3735.671 or (2) the owner violated R.C. 3735.671(E). See R.C. 3735.68

In short, the CRA statute gives the county auditor no authority or discretion to grant or revoke CRA exemptions, to determine the validity of a housing officer’s grant of a CRA tax exemption, or to refuse to list CRA exemptions granted by the city.

To be sure, in certain circumstances, Ohio’s tax code grants county auditors authority to remove items from the tax-exempt list. Section 5713.08(A) of the Ohio Revised Code states that the county’s exempt list “shall be corrected [by the county auditor] annually . . . by striking therefrom the items which in the opinion of the auditor have lost their right of exemption and which have been reentered on the taxable list.” But while this provision might give the county auditor authority to annually revoke other types of tax exemptions, this provision does not govern the revocation of CRA tax exemptions.

It is well-established in Ohio that “where a statute couched in general terms conflicts with a specific statute on the same subject, the latter must control.” *State v. Taylor*, 113 Ohio St.3d 297, 2007-Ohio-1950, 865 N.E.2d 37, ¶12. Section 1.51 of the Ohio Revised Code makes this clear, stating that where a general and a specific statute conflict, “the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.” See also *United Tel. Co. of Ohio v. Limbach* (1994), 71 Ohio St.3d 369, 372, 643 N.E.2d 1129.

Here, it is clear that R.C. 5713.08’s “striking therefrom” provision, which pertains to the revocation of tax exemptions generally, conflicts with R.C. 3735.68, which governs the revocation of CRA tax exemptions specifically. The CRA statute has a section, R.C. 3735.68, explicitly titled “Revocation of tax exemption.” It provides that only the housing officer (for residential properties) or the city’s legislative authority (for commercial or industrial properties) is empowered to revoke a CRA tax exemption. The CRA statute gives the county auditor no role in granting or revoking CRA exemptions. He has only the ministerial duty of placing the property back on the taxable list if the city revokes the exemption. See R.C. 3735.68 (once the housing officer or legislative authority decides to revoke a CRA exemption, “[t]he housing officer or legislative authority shall notify the county auditor and the owner of the property that the tax exemption no longer applies.”).

Moreover, the “striking therefrom” provision of R.C. 5713.08 has been in effect since 1941, whereas R.C. 3735.68 was promulgated in 1977. Accordingly, the general provision is not the later adoption. Thus, the later and more specific provision set forth in the CRA statute, R.C. 3735.68, governs. That provision gives no authority to the county auditor to revoke CRA tax exemptions granted by a city’s housing officer.

In sum, the county auditor has no role in the decision of whether to grant CRA tax exemptions and no authority to revoke CRA tax exemptions that have been granted by the city's housing officer. Accordingly, respondent Stewart has a clear legal duty to place on the county's tax exempt list the 355 CRA properties in CRAs 3 and 4 that were certified as exempt by the City of Lorain's housing officer.

### **III. Relators Have No Adequate Remedy at Law**

It is well settled that mandamus is the proper form of action where relators seek to compel a public officer to perform the duties imposed upon him by law. See, e.g., *State ex rel. Lakeview Local Sch. Bd. of Educ. v. Trumbull County Bd. of Comm'rs*, 109 Ohio St.3d 200, 2006-Ohio-2183, 846 N.E.2d 847 (complaint for mandamus was appropriate form of action for school board's claim that County Board of Commissioners had legal duty to distribute certain federal money); *State ex rel. Cincinnati Bell Tel. Co. v. Public Util. Comm'n*, 105 Ohio St.3d 177, 2005-Ohio-1150, 824 N.E.2d 69 (complaint for mandamus was proper form of action, and writ granted, on claim that PUCO had legal duty to transmit transcript of commission proceedings to court clerk); *State ex rel. Oberlin Citizens for Responsible Dev. v. Talarico*, 106 Ohio St.3d 481, 2005-Ohio-5061, 836 N.E.2d 529 (complaint for mandamus proper action with respect to claim that city auditor had legal duty to submit and certify initiative and referendum petitions seeking repeal of a certain ordinance).

More directly, this Court has repeatedly recognized mandamus as the proper form of action to compel a county auditor to perform his ministerial duties. See *State ex rel. The V Cos. v. Marshall* (1998), 81 Ohio St.3d 467, 692 N.E.2d 198 (mandamus is proper remedy to compel county auditor to direct payment under a contract in accordance with the orders of the county board of commissioners); *State ex rel. Taraloca Land Co. v. Fawley* (1994), 70 Ohio St.3d 441,

639 N.E.2d 98 (mandamus is proper remedy to compel auditor to transfer real property on tax list where deed has been submitted to the auditor); *State ex rel. Fenske v. McGovern* (1984), 11 Ohio St.3d 129, 464 N.E.2d 525 (mandamus was proper remedy to compel county officer to disburse longevity pay to police officer); *State ex rel. Perkins v. Ross* (1924), 109 Ohio St. 461, 143 N.E. 34 (mandamus is proper remedy to enforce duty of county auditor to enter against all lands within a particular city all taxes levied for city purposes; mandamus also proper to compel auditor to make an entry on the tax lists).

Relators clearly bring this action to compel respondent Stewart to perform his affirmative, ministerial duty to place on the exempt list the 355 CRA properties certified as exempt by the City of Lorain's housing officer.

Mandamus is the only proceeding that can provide that relief, even though there are certain proceedings in the Lorain County Court of Common Pleas that relate to Lorain's CRA exemptions. On September 7, the Lorain County Commissioners filed an action for declaratory relief against the city concerning the CRA exemptions. (Agr. St. ¶13) (the case is styled *Lorain County Comm'rs v. City of Lorain*, No.07cv152624). The action names respondent Stewart and others as defendants.

On September 14, 2007, the city filed an administrative appeal against respondent Stewart in the Lorain County Court of Common Pleas, challenging the auditor's refusal to place the CRA properties on the county's exempt list. (Agr. St. ¶14.) (Some property owners filed a similar suit that same day). (Id.) The city filed the administrative appeal out of an abundance of caution and in good faith, in order to preserve its possible right to an administrative appeal pursuant to R.C. 2506.01. All parties agree, however, that the auditor's refusal to list the 355 properties as exempt did not involve quasi-judicial proceedings, and thus

is not the proper subject for an administrative appeal under R.C. 2506.01 (Resp. Motion to Dismiss, at 11).

The declaratory judgment action and administrative appeals, now consolidated and pending in the Lorain County Court of Common Pleas, are not obstacles to mandamus relief. First, neither the declaratory judgment action nor the administrative appeals could deliver the remedy sought here: an order compelling respondent Stewart to place the 355 CRA properties on the exempt list until (if ever) the exemptions are challenged through the proper proceedings and declared invalid by a court. See *Maloney v. Rhodes* (1976), 45 Ohio St.2d 319, 345 N.E.2d 407 (Secretary of State had no authority to determine the legality of bills he was required to file; mandamus was the proper relief to compel him to perform his mandatory ministerial duty of filing the bills); *Haring v. Blumenthal* (D.D.C. 1979), 471 F. Supp. 1172 (“Unless and until the Congress, or court of competent jurisdiction . . . determines that a particular tax exemption ruling is invalid, the employees of the [Internal Revenue] Service . . . are obliged” to implement the tax exemption).

In short, without mandamus, the auditor (and countless other public officials) will claim the right to interpret the law for themselves, disregard proper procedures for airing their concerns, and flout their mandatory and ministerial duties accordingly. A declaratory judgment or administrative action can in no way remedy that problem.

Second, and for the reasons set forth below, neither the declaratory judgment action nor the administrative appeal is a proper proceeding for challenging the auditor’s refusal to place the CRA properties on the tax exempt list.

**A. The pending declaratory judgment action is invalid and not an adequate remedy because all challenges to CRA tax exemptions must be raised through the special statutory proceedings set forth in the CRA statute, R.C. 3735.65, *et seq.***

The County Commissioners' declaratory judgment action is invalid – and thus cannot be deemed an adequate remedy – because challenges to CRA tax exemptions are committed to the special statutory proceedings set forth in the CRA statute, R.C. 3735.65, *et seq.* The CRA statute calls for initial local review of all challenges to CRA exemptions. The statute broadly provides that any challenge to “the continued exemption of any property granted an exemption under [the CRA statute]” “shall be filed” with and determined in the first instance by the housing officer, R.C. 3735.67(E). That decision is then subject to review by the city’s community reinvestment area housing council, which has authority to overrule any decision of the housing officer. R.C. 3735.70. The housing council’s decision is then appealable to the court of common pleas. *Id.*

This procedure reaffirms that, as with the granting and revocation of CRA tax exemptions, the CRA statute provides special procedures – emphasizing preliminary review at the city level – for adjudicating challenges to CRA exemptions. See *Gahanna-Jefferson*, 93 Ohio St.3d at 239 (Moyer, C.J. dissenting and joined by Sweeney and Lundberg Stratton, JJ.) (noting that it was “the clear intent of the General Assembly to have R.C. 3735.65 *et seq.* [the CRA statute] act as a self-contained program administered on a local level” and that the CRA statute “outline[s] the exclusive procedure for the granting and revocation of [CRA] exemptions.”).

The rationale behind the statutory procedure’s emphasis on local review is clear and sensible. Challenges to CRA exemptions necessarily must be conducted on a parcel-to-parcel basis and account for a range of issues, including the nature of each property’s construction or

improvements, the date of such construction or improvements, the results of the city's on-site inspections, and other eligibility issues. Moreover, given that the CRA program is the bedrock of many cities' urban renewal efforts, allowing an official who has no role in the granting/revocation process to hold hundreds of exempt properties hostage will inevitably cause considerable economic harm, for both the city and property owners, as is the case here.

This Court has long held that a court has no jurisdiction in declaratory judgment over matters committed to special statutory proceedings. *State ex rel. Albright v. Court of Common Pleas of Delaware County* (1991), 60 Ohio St.3d 40, 42, 572 N.E.2d 1387 ("it is always inappropriate for courts to grant declaratory judgments . . . that attempt to resolve matters committed to special statutory proceedings."). And more generally, this Court has emphasized that where the General Assembly has specifically assigned an issue to a particular type of proceeding, that proceeding is the appropriate and only venue for the issue at hand. *State ex rel. Steckman v. Jackson* (1994), 70 Ohio St.3d 420, 427, 639 N.E.2d 83 (where statute provides that person aggrieved in public records request "may commence a mandamus action" to compel government disclosure of the documents, then mandamus "is the appropriate (and only) vehicle to compel the release of records alleged to be public.") (emphasis added).

Here, despite the fact that the CRA statute sets forth a specific statutory proceeding for challenging CRA exemptions, no one from the county – including respondent Stewart – has followed the proper statutory process for challenging these exemptions. The failure to follow the proper statutory procedures – and respondent Stewart's refusal to place the properties on the exempt list in the meantime – is contrary to Ohio law and should not be sanctioned by this Court.

Accordingly, the county's declaratory judgment action is improper, and thus cannot be recognized as an adequate alternative remedy for relators.

**B. The pending administrative appeal is not the proper proceeding for challenging the auditor's refusal to place the CRA properties on the exempt list because the auditor's decision did not involve a quasi-judicial proceeding.**

On September 14, 2007, the city filed against respondent Stewart an administrative appeal pursuant to R.C. 2506.01, challenging his refusal to place the CRA properties on the exempt list. That action also is not an adequate remedy for relators.

The city filed the administrative appeal in good faith and out of an abundance of caution, in order to preserve its possible right to an administrative appeal pursuant to R.C. § 2506.01. The city took this cautionary step pursuant to dicta in *Fidelity Sav. & Loan Co. v. Strabala* (Columbiana Cty App. May 1, 1986), Case No. 84-C-36, 1986 WL 5284, at \*3, which stated (although, without any elaboration) that a party aggrieved by an auditor's refusal to list properties as exempt should appeal the decision to the court of common pleas pursuant to the administrative appeal procedures set forth in R.C. 2506.01.

However, relators and respondent Stewart agree that *Strabala* is wrong on this issue (and, in any case, not binding authority) and that the auditor's refusal to list the 355 CRA properties as exempt did not involve quasi-judicial proceedings, and thus is not the proper subject for an administrative appeal under R.C. 2506.01. (Resp. Motion to Dismiss, 12) (noting that the auditor has moved to dismiss the administrative appeals "based on the lack of quasi-judicial proceedings below").<sup>6</sup>

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<sup>6</sup> Property owners who sought exemptions also filed administrative appeals against the Auditor pursuant to R.C. 2506.01. (Agr. St. ¶15.) For the same reasons discussed here, however, the administrative appeal process is not a proper forum for the property owners' claims.

As this Court has long held, “[t]he review of proceedings of administrative officers and agencies, authorized by Section 4(B), Article IV of the Ohio Constitution, contemplates quasi-judicial proceedings only, and administrative actions of administrative officers and agencies not resulting from quasi-judicial proceedings are not appealable to the Court of Common Pleas under the provisions of R.C. § 2506.01.” *M.J. Kelley Co. v. Cleveland*, 32 Ohio St.2d 150, syllabus ¶1 (emphasis added).

For a proceeding to be “quasi-judicial,” there must be a requirement for “notice, hearing and opportunity for introduction of evidence.” Id. at syllabus ¶2. There is no dispute that respondent Stewart’s refusal to place Lorain’s CRA properties on the exempt list did not involve any notice of hearing, an opportunity for a hearing, or an opportunity to introduce evidence. (Respondent’s Motion, at 11) (stating that the Auditor’s refusal to place the properties on the exempt list did not involve quasi-judicial proceedings).

In short, as the parties agree, relators’ challenge to respondent Stewart’s refusal to list the CRA properties as exempt cannot, as a matter of law, be adjudicated through a Section 2506.01 administrative appeal. Accordingly, that proceeding is not an adequate alternative remedy for relators.

For all of the above reasons, neither the declaratory judgment action nor the administrative appeal are adequate remedies for relators. The proper remedy for relators is through this mandamus action. In turn, the proper path for county officials seeking to challenge the CRA exemptions is through the special statutory proceedings prescribed by the CRA statute, R.C. 3735.65 *et seq.* Until (if ever) those procedures are followed and any challenges are resolved, respondent Stewart has a mandatory, ministerial duty to place on the exempt list the properties certified as exempt by the City of Lorain’s housing officer.

## CONCLUSION

Relators have demonstrated all of the required elements for mandamus relief. First, because the CRA statute vests authority in Ohio cities to create CRAs, and vests authority exclusively in city officials to grant or revoke CRA tax exemptions, relators have a clear legal right to the relief requested. Second, because the CRA statute confers no authority on the county auditor to grant or revoke CRA exemptions, respondent Stewart has a clear legal duty to place on the exempt list the 355 properties certified as exempt by the City of Lorain's housing officer. Finally, because mandamus is the only way to compel respondent Stewart to perform his mandatory and ministerial duty of listing the properties, and because none of the pending common pleas court actions are proper, relators have no adequate remedy at law.

Accordingly, this Court should grant the writ of mandamus compelling respondent Stewart to place on the exempt list the 355 CRA properties in CRAs 3 and 4 that have been certified as exempt by the City of Lorain and its housing officer.

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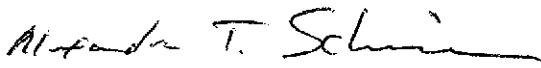
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The City of Lorain and Dan Given

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing Memorandum in Opposition was served by regular U.S. mail, first class, postage prepaid, this 23rd day of May, 2008, upon the following:

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# APPENDIX

## APPENDIX 1

## **3735.65 Community reinvestment area definitions.**

As used in sections 3735.65 to 3735.70 of the Revised Code:

(A) "Housing officer" means an officer or agency of a municipal corporation or county designated by the legislative authority of the municipal corporation or county, pursuant to section 3735.66 of the Revised Code, for each community reinvestment area to administer sections 3735.65 to 3735.69 of the Revised Code. One officer or agency may be designated as the housing officer for more than one community reinvestment area.

(B) "Community reinvestment area" means an area within a municipal corporation or unincorporated area of a county for which the legislative authority of the municipal corporation or, for the unincorporated area, of the county, has adopted a resolution under section 3735.66 of the Revised Code describing the boundaries of the area and containing a statement of finding that the area included in the description is one in which housing facilities or structures of historical significance are located and new housing construction and repair of existing facilities or structures are discouraged.

(C) "Remodeling" means any change made in a structure for the purpose of making it structurally more sound, more habitable, or for the purpose of improving its appearance.

(D) "Structure of historical or architectural significance" means those designated as such by resolution of the legislative authority of a municipal corporation, for those located in a municipal corporation, or the county, for those located in the unincorporated area of the county based on age, rarity, architectural quality, or because of a previous designation by a historical society, association, or agency.

Effective Date: 11-18-1977

## **3735.66 Resolution describing boundaries of areas and eligibility for tax exemption.**

The legislative authorities of municipal corporations and counties may survey the housing within their jurisdictions and, after the survey, may adopt resolutions describing the boundaries of community reinvestment areas which contain the conditions required for the finding under division (B) of section 3735.65 of the Revised Code. The findings resulting from the survey shall be incorporated in the resolution describing the boundaries of an area. The legislative authority may stipulate in the resolution that only new structures or remodeling classified as to use as commercial, industrial, or residential, or some combination thereof, and otherwise satisfying the requirements of section 3735.67 of the Revised Code are eligible for exemption from taxation under that section. If the resolution does not include such a stipulation, all new structures and remodeling satisfying the requirements of section 3735.67 of the Revised Code are eligible for exemption from taxation regardless of classification. Whether or not the resolution includes such a stipulation, the classification of the structures or remodeling eligible for exemption in the area shall at all times be consistent with zoning restrictions applicable to the area. For the purposes of sections 3735.65 to 3735.70 of the Revised Code, whether a structure or remodeling composed of multiple units is classified as commercial or residential shall be determined by resolution or ordinance of the legislative authority or, in the absence of such a determination, by the classification of the use of the structure or remodeling under the applicable zoning regulations.

If construction or remodeling classified as residential is eligible for exemption from taxation, the resolution shall specify a percentage, not to exceed one hundred per cent, of the assessed valuation of such property to be exempted. The percentage specified shall apply to all residential construction or remodeling for which exemption is granted.

The resolution adopted pursuant to this section shall be published in a newspaper of general circulation in the municipal corporation, if the resolution is adopted by the legislative authority of a municipal corporation, or in a newspaper of general circulation in the county, if the resolution is adopted by the legislative authority of the county, once a week for two consecutive weeks immediately following its adoption.

Each legislative authority adopting a resolution pursuant to this section shall designate a housing officer. In addition, each such legislative authority, not later than fifteen days after the adoption of the resolution, shall petition the director of development for the director to confirm the findings described in the resolution. The petition shall be accompanied by a copy of the resolution and by a map of the community reinvestment area in sufficient detail to denote the specific boundaries of the area and to indicate zoning restrictions applicable to the area. The director shall determine whether the findings contained in the resolution are valid, and whether the classification of structures or remodeling eligible for exemption under the resolution is consistent with zoning restrictions applicable to the area as indicated on the map. Within thirty days of receiving the petition, the director shall forward the director's determination to the legislative authority. The legislative authority or housing officer shall not grant any exemption from taxation under section 3735.67 of the Revised Code until the director forwards the director's determination to the legislative authority. The director shall assign to each community reinvestment area a unique designation by which the area shall be identified for purposes of sections 3735.65 to 3735.70 of the Revised Code.

If zoning restrictions in any part of a community reinvestment area are changed at any time after the legislative authority petitions the director under this section, the legislative authority shall notify the director and shall submit a map of the area indicating the new zoning restrictions in the area.

Effective Date: 09-26-2003

## 3735.67 Applying for exemption from taxation.

(A) The owner of real property located in a community reinvestment area and eligible for exemption from taxation under a resolution adopted pursuant to section 3735.66 of the Revised Code may file an application for an exemption from real property taxation of a percentage of the assessed valuation of a new structure or remodeling, completed after the effective date of the resolution adopted pursuant to section 3735.66 of the Revised Code, with the housing officer designated pursuant to section 3735.66 of the Revised Code for the community reinvestment area in which the property is located. If any part of the new structure or remodeling that would be exempted is of real property to be used for commercial or industrial purposes, the legislative authority and the owner of the property shall enter into a written agreement pursuant to section 3735.671 of the Revised Code prior to commencement of construction or remodeling; if such an agreement is subject to approval by the board of education of the school district within the territory of which the property is or will be located, the agreement shall not be formally approved by the legislative authority until the board of education approves the agreement in the manner prescribed by that section.

(B) The housing officer shall verify the construction of the new structure or the cost of the remodeling and the facts asserted in the application. The housing officer shall determine whether the construction or the cost of the remodeling meets the requirements for an exemption under this section. In cases involving a structure of historical or architectural significance, the housing officer shall not determine whether the remodeling meets the requirements for a tax exemption unless the appropriateness of the remodeling has been certified, in writing, by the society, association, agency, or legislative authority that has designated the structure or by any organization or person authorized, in writing, by such society, association, agency, or legislative authority to certify the appropriateness of the remodeling.

(C) If the construction or remodeling meets the requirements for exemption, the housing officer shall forward the application to the county auditor with a certification as to the division of this section under which the exemption is granted, and the period and percentage of the exemption as determined by the legislative authority pursuant to that division. If the construction or remodeling is of commercial or industrial property and the legislative authority is not required to certify a copy of a resolution under section 3735.671 of the Revised Code, the housing officer shall comply with the notice requirements prescribed under section 5709.83 of the Revised Code, unless the board has adopted a resolution under that section waiving its right to receive such a notice.

(D) Except as provided in division (F) of this section, the tax exemption shall first apply in the year the construction or remodeling would first be taxable but for this section. In the case of remodeling that qualifies for exemption, a percentage, not to exceed one hundred per cent, of the amount by which the remodeling increased the assessed value of the structure shall be exempted from real property taxation. In the case of construction of a structure that qualifies for exemption, a percentage, not to exceed one hundred per cent, of the assessed value of the structure shall be exempted from real property taxation. In either case, the percentage shall be the percentage set forth in the agreement if the structure or remodeling is to be used for commercial or industrial purposes, or the percentage set forth in the resolution describing the community reinvestment area if the structure or remodeling is to be used for residential purposes.

The construction of new structures and the remodeling of existing structures are hereby declared to be a public purpose for which exemptions from real property taxation may be granted for the following

periods:

- (1) For every dwelling containing not more than two family units located within the same community reinvestment area and upon which the cost of remodeling is at least two thousand five hundred dollars, a period to be determined by the legislative authority adopting the resolution describing the community reinvestment area where the dwelling is located, but not exceeding ten years;
- (2) For every dwelling containing more than two units and commercial or industrial properties, located within the same community reinvestment area, upon which the cost of remodeling is at least five thousand dollars, a period to be determined by the legislative authority adopting the resolution, but not exceeding twelve years;
- (3) Except as provided in division (F) of this section, for construction of every dwelling, and commercial or industrial structure located within the same community reinvestment area, a period to be determined by the legislative authority adopting the resolution, but not exceeding fifteen years.

(E) Any person, board, or officer authorized by section 5715.19 of the Revised Code to file complaints with the county board of revision may file a complaint with the housing officer challenging the continued exemption of any property granted an exemption under this section. A complaint against exemption shall be filed prior to the thirty-first day of December of the tax year for which taxation of the property is requested. The housing officer shall determine whether the property continues to meet the requirements for exemption and shall certify the housing officer's findings to the complainant. If the housing officer determines that the property does not meet the requirements for exemption, the housing officer shall notify the county auditor, who shall correct the tax list and duplicate accordingly.

(F) The owner of a dwelling constructed in a community reinvestment area may file an application for an exemption after the year the construction first became subject to taxation. The application shall be processed in accordance with the procedures prescribed under this section and shall be granted if the construction that is the subject of the application otherwise meets the requirements for an exemption under this section. If approved, the exemption sought in the application first applies in the year the application is filed. An exemption approved pursuant to this division continues only for those years remaining in the period described in division (D)(3) of this section. No exemption may be claimed for any year in that period that precedes the year in which the application is filed.

Effective Date: 09-26-2003; 03-30-2006

## **3735.671 Written agreement where commercial or industrial property is to be exempted.**

(A) If construction or remodeling of commercial or industrial property is to be exempted from taxation pursuant to section 3735.67 of the Revised Code, the legislative authority and the owner of the property, prior to the commencement of construction or remodeling, shall enter into a written agreement, binding on both parties for a period of time that does not end prior to the end of the period of the exemption, that includes all of the information and statements prescribed by this section. Agreements may include terms not prescribed by this section, but such terms shall in no way derogate from the information and statements prescribed by this section.

(1) Except as otherwise provided in division (A)(2) or (3) of this section, an agreement entered into under this section shall not be approved by the legislative authority unless the board of education of the city, local, or exempted village school district within the territory of which the property is or will be located approves the agreement. For the purpose of obtaining such approval, the legislative authority shall certify a copy of the agreement to the board of education not later than forty-five days prior to approving the agreement, excluding Saturday, Sunday, and a legal holiday as defined in section 1.14 of the Revised Code. The board of education, by resolution adopted by a majority of the board, shall approve or disapprove the agreement and certify a copy of the resolution to the legislative authority not later than fourteen days prior to the date stipulated by the legislative authority as the date upon which approval of the agreement is to be formally considered by the legislative authority. The board of education may include in the resolution conditions under which the board would approve the agreement. The legislative authority may approve an agreement at any time after the board of education certifies its resolution approving the agreement to the legislative authority, or, if the board approves the agreement conditionally, at any time after the conditions are agreed to by the board and the legislative authority.

(2) Approval of an agreement by the board of education is not required under division (A)(1) of this section if, for each tax year the real property is exempted from taxation, the sum of the following quantities, as estimated at or prior to the time the agreement is formally approved by the legislative authority, equals or exceeds fifty per cent of the amount of taxes, as estimated at or prior to that time, that would have been charged and payable that year upon the real property had that property not been exempted from taxation:

(a) The amount of taxes charged and payable on any portion of the assessed valuation of the new structure or remodeling that will not be exempted from taxation under the agreement;

(b) The amount of taxes charged and payable on tangible personal property located on the premises of the new structure or of the structure to be remodeled under the agreement, whether payable by the owner of the structure or by a related member, as defined in section 5733.042 of the Revised Code without regard to division (B) of that section.

(c) The amount of any cash payment by the owner of the new structure or structure to be remodeled to the school district, the dollar value, as mutually agreed to by the owner and the board of education, of any property or services provided by the owner of the property to the school district, whether by gift, loan, or otherwise, and any payment by the legislative authority to the school district pursuant to

section 5709.82 of the Revised Code.

The estimates of quantities used for purposes of division (A)(2) of this section shall be estimated by the legislative authority. The legislative authority shall certify to the board of education that the estimates have been made in good faith. Departures of the actual quantities from the estimates subsequent to approval of the agreement by the board of education do not invalidate the agreement.

(3) If a board of education has adopted a resolution waiving its right to approve agreements and the resolution remains in effect, approval of an agreement by the board is not required under this division. If a board of education has adopted a resolution allowing a legislative authority to deliver the notice required under this division fewer than forty-five business days prior to the legislative authority's execution of the agreement, the legislative authority shall deliver the notice to the board not later than the number of days prior to such execution as prescribed by the board in its resolution. If a board of education adopts a resolution waiving its right to approve agreements or shortening the notification period, the board shall certify a copy of the resolution to the legislative authority. If the board of education rescinds such a resolution, it shall certify notice of the rescission to the legislative authority.

(B) Each agreement shall include the following information:

(1) The names of all parties to the agreement;

(2) A description of the remodeling or construction, whether or not to be exempted from taxation, including existing or new structure size and cost thereof; the value of machinery, equipment, furniture, and fixtures, including an itemization of the value of machinery, equipment, furniture, and fixtures used at another location in this state prior to the agreement and relocated or to be relocated from that location to the property, and the value of machinery, equipment, furniture, and fixtures at the facility prior to the execution of the agreement; the value of inventory at the property, including an itemization of the value of inventory held at another location in this state prior to the agreement and relocated or to be relocated from that location to the property, and the value of inventory held at the property prior to the execution of the agreement;

(3) The scheduled starting and completion dates of remodeling or construction of real property or of investments made in machinery, equipment, furniture, fixtures, and inventory;

(4) Estimates of the number of employee positions to be created each year of the agreement and of the number of employee positions retained by the owner due to the remodeling or construction, itemized as to the number of full-time, part-time, permanent, and temporary positions;

(5) Estimates of the dollar amount of payroll attributable to the positions set forth in division (B)(4) of this section, similarly itemized;

(6) The number of employee positions, if any, at the property and at any other location in this state at the time the agreement is executed, itemized as to the number of full-time, part-time, permanent, and temporary positions.

(C) Each agreement shall set forth the following information and incorporate the following statements:

(1) A description of real property to be exempted from taxation under the agreement, the percentage of the assessed valuation of the real property exempted from taxation, and the period for which the exemption is granted, accompanied by the statement: "The exemption commences the first year for which the real property would first be taxable were that property not exempted from taxation. No exemption shall commence after ..... (insert date) nor extend beyond ..... (insert date)."

(2) "..... (insert name of owner) shall pay such real property taxes as are not exempted under this agreement and are charged against such property and shall file all tax reports and returns as required by law. If ..... (insert name of owner) fails to pay such taxes or file such returns and reports, exemptions from taxation granted under this agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter."

(3) "..... (insert name of owner) hereby certifies that at the time this agreement is executed, ..... (insert name of owner) does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe delinquent taxes for which ..... (insert name of owner) is liable under Chapter 5733., 5735., 5739., 5741., 5743., 5747., or 5753. of the Ohio Revised Code, or, if such delinquent taxes are owed, ..... (insert name of owner) currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against ..... (insert name of owner). For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Revised Code governing payment of those taxes."

(4) "..... (insert name of municipal corporation or county) shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions."

(5) "If for any reason ..... (insert name of municipal corporation or county) revokes the designation of the area, entitlements granted under this agreement shall continue for the number of years specified under this agreement, unless ..... (insert name of owner) materially fails to fulfill its obligations under this agreement and ..... (insert name of municipal corporation or county) terminates or modifies the exemptions from taxation pursuant to this agreement."

(6) "If ..... (insert name of owner) materially fails to fulfill its obligations under this agreement, or if ..... (insert name of municipal corporation or county) determines that the certification as to delinquent taxes required by this agreement is fraudulent, ..... (insert name of municipal corporation or county) may terminate or modify the exemptions from taxation granted under this agreement."

(7) "..... (insert name of owner) shall provide to the proper tax incentive review council any information reasonably required by the council to evaluate the applicant's compliance with the agreement, including returns filed pursuant to section 5711.02 of the Ohio Revised Code if requested by the council."

(8) "This agreement is not transferable or assignable without the express, written approval of ..... (insert name of municipal corporation or county)."

(9) "Exemptions from taxation granted under this agreement shall be revoked if it is determined that ..... (insert name of owner), any successor to that person, or any related member (as those terms are defined in division (E) of section 3735.671 of the Ohio Revised Code) has violated the prohibition against entering into this agreement under division (E) of section 3735.671 or section 5709.62 or 5709.63 of the Ohio Revised Code prior to the time prescribed by that division or either of those sections."

(10) "..... (insert name of owner) and ..... (insert name of municipal corporation or county) acknowledge that this agreement must be approved by formal action of the legislative authority of ..... (insert name of municipal corporation or county) as a condition for the agreement to take effect. This agreement takes effect upon such approval."

The statement described in division (C)(6) of this section may include the following statement, appended at the end of the statement: ", and may require the repayment of the amount of taxes that would have been payable had the property not been exempted from taxation under this agreement." If the agreement includes a statement requiring repayment of exempted taxes, it also may authorize the legislative authority to secure repayment of such taxes by a lien on the exempted property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property.

(D) Except as otherwise provided in this division, an agreement entered into under this section shall require that the owner pay an annual fee equal to the greater of one per cent of the amount of taxes exempted under the agreement or five hundred dollars; provided, however, that if the value of the incentives exceeds two hundred fifty thousand dollars, the fee shall not exceed two thousand five hundred dollars. The fee shall be payable to the legislative authority once per year for each year the agreement is effective on the days and in the form specified in the agreement. Fees paid shall be deposited in a special fund created for such purpose by the legislative authority and shall be used by the legislative authority exclusively for the purpose of complying with section 3735.672 of the Revised Code and by the tax incentive review council created under section 5709.85 of the Revised Code exclusively for the purposes of performing the duties prescribed under that section. The legislative authority may waive or reduce the amount of the fee, but such waiver or reduction does not affect the obligations of the legislative authority or the tax incentive review council to comply with section 3735.672 or 5709.85 of the Revised Code.

(E) If any person that is party to an agreement granting an exemption from taxation discontinues operations at the structure to which that exemption applies prior to the expiration of the term of the agreement, that person, any successor to that person, and any related member shall not enter into an agreement under this section or section 5709.62, 5709.63, or 5709.632 of the Revised Code, and no legislative authority shall enter into such an agreement with such a person, successor, or related member, prior to the expiration of five years after the discontinuation of operations. As used in this division, "successor" means a person to which the assets or equity of another person has been transferred, which transfer resulted in the full or partial nonrecognition of gain or loss, or resulted in a carryover basis, both as determined by rule adopted by the tax commissioner. "Related member" has the same meaning as defined in section 5733.042 of the Revised Code without regard to division (B) of that section.

The director of development shall review all agreements submitted to the director under division (F) of this section for the purpose of enforcing this division. If the director determines there has been a violation of this division, the director shall notify the legislative authority of such violation, and the legislative authority immediately shall revoke the exemption granted under the agreement.

(F) When an agreement is entered into under this section, the legislative authority authorizing the agreement shall forward a copy of the agreement to the director of development within fifteen days after the agreement is entered into.

Effective Date: 09-26-2003; 03-23-2005

## 3735.672 Annual report.

(A) On or before the thirty-first day of March each year, a legislative authority that has entered into an agreement with a party under section 3735.671 of the Revised Code shall submit to the director of development and the board of education of each school district of which a municipal corporation or township to which such an agreement applies is a part a report on all such agreements in effect during the preceding calendar year. The report shall include the following information:

(1) The designation, assigned by the director of development, of each community reinvestment area within the municipal corporation or county, and the total population of each area according to the most recent data available;

(2) The number of agreements and the number of full-time employees subject to those agreements within each area, each according to the most recent data available and identified and categorized by the appropriate standard industrial code, and the rate of unemployment in the municipal corporation or county in which the area is located for each year since the area was certified;

(3) The number of agreements approved and executed during the calendar year for which the report is submitted, the total number of agreements in effect on the thirty-first day of December of the preceding calendar year, the number of agreements that expired during the calendar year for which the report is submitted, and the number of agreements scheduled to expire during the calendar year in which the report is submitted. For each agreement that expired during the calendar year for which the report is submitted, the legislative authority shall include the amount of taxes exempted under the agreement.

(4) The number of agreements receiving compliance reviews by the tax incentive review council in the municipal corporation or county during the calendar year for which the report is submitted, including all of the following information:

(a) The number of agreements the terms of which the party has complied with, indicating separately for each such agreement the value of the real property exempted pursuant to the agreement and a comparison of the stipulated and actual schedules for hiring new employees, for retaining existing employees, and for the amount of payroll of the party attributable to these employees;

(b) The number of agreements the terms of which a party has failed to comply with, indicating separately for each such agreement the value of the real and personal property exempted pursuant to the agreement and a comparison of the stipulated and actual schedules for hiring new employees, for retaining existing employees, and for the amount of payroll of the enterprise attributable to these employees;

(c) The number of agreements about which the tax incentive review council made recommendations to the legislative authority, and the number of such recommendations that have not been followed;

(d) The number of agreements rescinded during the calendar year for which the report is submitted.

(5) The number of parties subject to agreements that expanded within each area, including the number of new employees hired and existing employees retained by that party, and the number of

new parties subject to agreements that established within each area, including the number of new employees hired by each party;

(6) For each agreement in effect during any part of the preceding year, the number of employees employed by the party at the property that is the subject of the agreement immediately prior to formal approval of the agreement, the number of employees employed by the party at that property on the thirty-first day of December of the preceding year, the payroll of the party for the preceding year, the amount of taxes paid on real property that was exempted under the agreement, and the amount of such taxes that were not paid because of the exemption.

(B) Upon the failure of a municipal corporation or county to comply with division (A) of this section:

(1) Beginning on the first day of April of the calendar year in which the municipal corporation or county fails to comply with that division, the municipal corporation or county shall not enter into any agreements under section 3735.671 of the Revised Code until the municipal corporation or county has complied with division (A) of this section.

(2) On the first day of each ensuing calendar month until the municipal corporation or county complies with that division, the director of development shall either order the proper county auditor to deduct from the next succeeding payment of taxes to the municipal corporation or county under section 321.31, 321.32, 321.33, or 321.34 of the Revised Code an amount equal to five hundred dollars for each calendar month the municipal corporation or county fails to comply with that division, or order the county auditor to deduct such an amount from the next succeeding payment to the municipal corporation or county from the undivided local government fund under section 5747.51 of the Revised Code. At the time such a payment is made, the county auditor shall comply with the director's order by issuing a warrant, drawn on the fund from which such money would have been paid, to the director of development, who shall deposit the warrant into the state community reinvestment area program administration fund created in division (C) of this section.

(C) The director, by rule, shall establish the state's application fee for applications submitted to a municipal corporation or county to enter into an agreement under section 3735.671 of the Revised Code. In establishing the amount of the fee, the director shall consider the state's cost of administering the community reinvestment area program, including the cost of reviewing the reports required under division (A) of this section. The director may change the amount of the fee at such times and in such increments as the director considers necessary. Any municipal corporation or county that receives an application shall collect the application fee and remit the fee for deposit in the state treasury to the credit of the tax incentive programs operating fund created in section 122.174 of the Revised Code.

Effective Date: 07-22-1994; 2007 HB119 06-30-2007

## **3735.673 Notice to legislative authority.**

If a person operating in a county or municipal corporation in this state intends to relocate or relocates part or all of its operations to another county or municipal corporation in this state and has entered into or intends to enter into an agreement under section 3735.671 of the Revised Code with that county or municipal corporation, the legislative authority or an officer of the county or municipal corporation to which that person intends to relocate or relocates shall serve the legislative authority of the county or municipal corporation from which that person intends to relocate or relocates with notice of the person's intention to relocate, accompanied by a copy of the agreement to be entered into or entered into pursuant to section 3735.671 of the Revised Code and a statement of the person's reasons for relocation. The legislative authority or officer also shall serve such notice on the director of development. In both cases, service shall be by personal service or certified mail, return receipt requested, not later than thirty days prior to the day of the first public meeting at which the agreement is deliberated by the legislative authority of the county or municipal corporation to which the person intends to relocate or relocates. With the approval of the director of development, service shall be not later than fifteen days prior to the day of the first public meeting of the legislative authority at which the agreement is deliberated. The legislative authority or officer required to serve notice shall seek such approval by applying to the director at the earliest possible time prior to that meeting. The director may approve the later service if the director determines that earlier notice is not possible or would be likely to jeopardize realization of the project. If approval for a later notice is applied for, the legislative authority or officer need not serve notice to the director as otherwise required by this section.

If the legislative authority or officer required to serve such notice fails to do so as prescribed by this section, the legislative authority shall not enter into an agreement under that section with that person.

This section applies only to relocations of operations that result or would result in the reduction of employment or the cessation of operations at a place of business in this state.

Effective Date: 07-22-1994

## **3735.68 Revoking tax exemption.**

The housing officer shall make annual inspections of the properties within the community reinvestment area upon which are located structures or remodeling for which an exemption has been granted under section 3735.67 of the Revised Code. If the housing officer finds that the property has not been properly maintained or repaired due to the neglect of the owner, the housing officer may revoke the exemption at any time after the first year of exemption. If the owner of commercial or industrial property exempted from taxation under section 3735.67 of the Revised Code has materially failed to fulfill its obligations under the written agreement entered into under section 3735.671 of the Revised Code, or if the owner is determined to have violated division (E) of that section, the legislative authority, subject to the terms of the agreement, may revoke the exemption at any time after the first year of exemption. The housing officer or legislative authority shall notify the county auditor and the owner of the property that the tax exemption no longer applies. If the housing officer or legislative authority revokes a tax exemption, the housing officer shall send a report of the revocation to the community reinvestment area housing council and to the tax incentive review council established pursuant to section 3735.69 or 5709.85 of the Revised Code, containing a statement of the findings as to the maintenance and repair of the property, failure to fulfill obligations under the written agreement, or violation of division (E) of section 3735.671 of the Revised Code, and the reason for revoking the exemption.

If the agreement entered into under section 3735.671 of the Revised Code so provides, the legislative authority of a municipal corporation or county may require the owner of property whose exemption has been revoked to reimburse the taxing authorities within whose taxing jurisdiction the exempted property is located for the amount of real property taxes that would have been payable to those authorities had the property not been exempted from taxation.

Effective Date: 07-22-1994

## **3735.69 Community reinvestment area housing council - powers and duties.**

(A) A community reinvestment area housing council shall be appointed for each community reinvestment area. When the area is located within a municipal corporation, the council shall be composed of two members appointed by the mayor of the municipal corporation, two members appointed by the legislative authority of the municipal corporation, and one member appointed by the planning commission of the municipal corporation. The majority of the foregoing members shall then appoint two additional members who shall be residents of the political subdivision. When the area is located within an unincorporated area of a county, the council shall be composed of one member appointed by each member of the board of county commissioners of the county where the area is located and two members appointed by the county planning commission. The majority of the foregoing members shall then appoint two additional members who shall be residents of the political subdivision. Terms of the members of the council shall be for three years. An unexpired term resulting from a vacancy in the council shall be filled in the same manner as the initial appointment was made.

The council shall make an annual inspection of the properties within the community reinvestment area for which an exemption has been granted under section 3735.67 of the Revised Code. The council shall also hear appeals under section 3735.70 of the Revised Code.

(B) On or before the thirty-first day of March each year, any municipal corporation or county that has created a community reinvestment area under section 3735.66 of the Revised Code shall submit to the director of development a status report summarizing the activities and projects for which an exemption has been granted in that area.

Effective Date: 01-13-1993

## **3735.70 Appeals.**

Any person aggrieved under sections 3735.65 to 3735.69 of the Revised Code may appeal to the community reinvestment area housing council, which shall have the authority to overrule any decision of a housing officer. Appeals may be taken from a decision of the council to the court of common pleas of the county where the area is located.

Effective Date: 11-18-1977

## APPENDIX 2

age, rarity, architectural quality, or because of a previous designation by a historical society, association, or agency.

**HISTORY:** 1977 S 251, eff. 11-18-77  
1969 H 754

#### PRACTICE AND STUDY AIDS

Gotherman & Babbitt, Ohio Municipal Law, Text 26.07, 26.08(B), 26.09, 26.10(A), 26.11, 26.13(A)

#### LEGAL ENCYCLOPEDIAS AND ALR

OJUR 3d: 77, Public Housing and Urban Renewal § 104, 105, 108

#### 3735.66 Community reinvestment areas

The legislative authorities of municipal corporations and counties may survey the housing within their jurisdictions and, after the survey, may adopt resolutions describing the boundaries of community reinvestment areas which contain the conditions required for the finding under division (B) of section 3735.65 of the Revised Code.

The resolution adopted pursuant to this section shall be published in a newspaper of general circulation in the municipal corporation, if the resolution is adopted by the legislative authority of a municipal corporation, or in a newspaper of general circulation in the county, if the resolution is adopted by the legislative authority of the county, once a week for two consecutive weeks immediately following its adoption.

Each legislative authority adopting a resolution pursuant to this section shall designate a housing officer. In addition, each such legislative authority, not later than fifteen days after the adoption of the resolution, shall submit to the director of development a copy of the resolution, along with a map of the community reinvestment area. The map shall be of sufficient detail to denote the specific boundaries of the area.

**HISTORY:** 1992 S 363, eff. 1-13-93  
1977 S 251; 1969 H 754

#### UNCODIFIED LAW

1992 S 363, § 3, eff. 1-13-93, reads: Not later than ninety days after the effective date of this section, any county or municipal corporation that has adopted a resolution prior to the effective date of this section creating a community reinvestment area under section 3735.66 of the Revised Code, and any county, township, or municipal corporation that has adopted a resolution or ordinance prior to the effective date of this section granting a tax increment financing tax exemption under section 5709.41, 5709.73, or 5709.78 of the Revised Code, shall submit to the Director of Development a copy of that resolution or ordinance.

#### PRACTICE AND STUDY AIDS

Gotherman & Babbitt, Ohio Municipal Law, Text 26.07, 26.08(A)(B), 26.11, 26.13(A)

#### CROSS REFERENCES

Newspapers of general circulation, 7.12

#### LEGAL ENCYCLOPEDIAS AND ALR

OJUR 3d: 77, Public Housing and Urban Renewal § 104, 105

#### NOTES ON DECISIONS AND OPINIONS

OAG 87-047. Where a community reinvestment area has been properly established under RC 3735.66, it continues to exist despite

subsequent changes in conditions in the area, as where the only residential structure in the area is destroyed by fire.

#### 3735.67 Application for exemption from real property taxation; procedures; limits

(A) The owner of any real property in a community reinvestment area may file an application for an exemption from real property taxation for a new structure or remodeling, completed after the effective date of the resolution adopted pursuant to section 3735.66 of the Revised Code, with the housing officer designated pursuant to section 3735.66 of the Revised Code, for the community reinvestment area in which the property is located.

(B) The housing officer shall verify the construction of the new structure or the cost of the remodeling and the facts asserted in the application. The housing officer shall determine whether the construction or the cost of the remodeling meets the requirements for an exemption under division (D)(1), (2), or (3) of this section. In cases involving a structure of historical or architectural significance, the housing officer shall not determine whether the remodeling meets the requirements for a tax exemption unless the appropriateness of the remodeling has been certified, in writing, by the society, association, agency, or legislative authority that has designated the structure or by any organization or person authorized, in writing, by such society, association, agency, or legislative authority to certify the appropriateness of the remodeling.

(C) If the construction or remodeling meets the requirements for exemption, and after complying with section 5709.83 of the Revised Code, the housing officer shall forward the application to the county auditor with a certification as to the division of this section under which the exemption is granted and the period of the exemption as determined by the legislative authority pursuant to that division.

(D) The tax exemption shall first apply in the year following the calendar year in which the certification is made to the county auditor by the housing officer pursuant to this section. If the remodeling qualifies for an exemption under division (D)(1) or (2) of this section, the dollar amount by which the remodeling increased the market value of the structure shall be exempt from real property taxation. If the construction of the structure qualifies for an exemption under division (D)(3) of this section, the structure shall not be considered an improvement on the land on which it is located for the purpose of real property taxation.

The construction of new structures and the remodeling of existing structures are hereby declared to be a public purpose for which exemptions from real property taxation may be granted for the following periods:

(1) For every dwelling containing not more than two family units, located within the same community reinvestment area, and upon which the cost of remodeling is at least two thousand five hundred dollars, a period to be determined by the legislative authority adopting the resolution, pursuant to section 3735.66 of the Revised Code, describing the community reinvestment area where the dwelling is located, but not exceeding ten years;

(2) For every dwelling containing more than two units, and commercial or industrial properties, located within the same community reinvestment area, and upon which the cost of remodeling is at least five thousand dollars a period to be determined by the legislative authority adopting the

resolution, pursuant to section 3735.66 of the Revised Code, describing the community reinvestment area where the dwelling or property is located, but not exceeding twelve years;

(3) For construction of every dwelling, or commercial or industrial structure located within the same community reinvestment area, a period to be determined by the legislative authority adopting the resolution, pursuant to section 3735.66 of the Revised Code, describing the community reinvestment area where the dwelling or structure is located, but not exceeding fifteen years.

**HISTORY:** 1990 H 103, eff. 3-27-91  
1977 S 251; 1971 H 1; 1969 H 754

#### PRACTICE AND STUDY AIDS

Baldwin's Ohio Township Law, Text 3.04  
Baldwin's Ohio School Law, Text 39.04  
Gotherman & Babbitt, Ohio Municipal Law, Text 26.07, 26.10(A) to (D), 26.11, 26.13(A), 26.14

#### CROSS REFERENCES

Joint economic development districts, tax abatement, 715.70  
Certification of tax information to education department, 3317.021  
Tax on privilege to use public property for nonpublic purpose, 5705.61  
Real property tax exemptions, 5709.01  
Miscellaneous real property tax exemptions, 5709.05 to 5709.19  
Tax exemption for property used for scientific research, charge upon sale of property, 5709.12  
Compensation for school districts for revenue lost as result of tax exemptions, 5709.82  
Property tax exemption applied for, notice to school board, 5715.27

#### LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 77, Public Housing and Urban Renewal § 104, 106 to 108; 86, Taxation § 690  
Am Jur 2d: 40, Housing Laws and Urban Redevelopment § 27 to 32

#### NOTES ON DECISIONS AND OPINIONS

OAG 87-047. Once a community reinvestment area has been established, if the only residential structure in the area is destroyed by fire, real property in the area continues to be eligible for real property tax exemptions under RC 3735.67 in the calendar year following certification when construction or renovation is complete and the application for the exemption is certified by the housing officer.

Ethics Op 89-008. RC 2921.42(A)(1) and 102.03(D) prohibit a city council member from voting, deliberating, participating in discussions, or otherwise authorizing or using the official authority or influence of his position with regard to an application for a property tax abatement submitted by a company with which he is employed.

#### 3735.68 Inspections; revocation of exemption

The housing officer shall make annual inspections of the properties within the community reinvestment area upon which are located structures or remodeling for which an exemption has been granted under section 3735.67 of the Revised Code. If the housing officer finds that the property has not been properly maintained or repaired due to the neglect of the owner, he may revoke the tax exemption at any time after the first year of exemption. The housing officer shall notify the county auditor and the owner of the

property that the tax exemption no longer applies. If the housing officer revokes a tax exemption, he shall send a report of the revocation to the community reinvestment area housing council, established pursuant to section 3735.69 of the Revised Code, containing a statement of his findings as to the maintenance and repair of the property and his reason for revoking the exemption.

**HISTORY:** 1977 S 251, eff. 11-18-77

**Note:** Former 3735.68 repealed by 1977 S 251, eff. 11-18-77; 1969 H 754.

#### PRACTICE AND STUDY AIDS

Gotherman & Babbitt, Ohio Municipal Law, Text 26.07, 26.12, 26.13(A)

#### LEGAL ENCYCLOPEDIAS AND ALR

OJur 3d: 77, Public Housing and Urban Renewal § 108

#### 3735.69 Housing council for each area

(A) A community reinvestment area housing council shall be appointed for each community reinvestment area. When the area is located within a municipal corporation, the council shall be composed of two members appointed by the mayor of the municipal corporation, two members appointed by the legislative authority of the municipal corporation, and one member appointed by the planning commission of the municipal corporation. The majority of the foregoing members shall then appoint two additional members who shall be residents of the political subdivision. When the area is located within an unincorporated area of a county, the council shall be composed of one member appointed by each member of the board of county commissioners of the county where the area is located and two members appointed by the county planning commission. The majority of the foregoing members shall then appoint two additional members who shall be residents of the political subdivision. Terms of the members of the council shall be for three years. An unexpired term resulting from a vacancy in the council shall be filled in the same manner as the initial appointment was made.

The council shall make an annual inspection of the properties within the community reinvestment area for which an exemption has been granted under section 3735.67 of the Revised Code. The council shall also hear appeals under section 3735.70 of the Revised Code.

(B) On or before the thirty-first day of March each year, any municipal corporation or county that has created a community reinvestment area under section 3735.66 of the Revised Code shall submit to the director of development a status report summarizing the activities and projects for which an exemption has been granted in that area.

**HISTORY:** 1992 S 363, eff. 1-13-93  
1987 H 171; 1977 S 251

**Note:** 3735.69 contains provisions analogous to former 3735.71, repealed by 137 v 251, eff. 11-18-77.

**Note:** Former 3735.69 repealed by 1977 S 251, eff. 11-18-77; 1969 H 754.

#### PRACTICE AND STUDY AIDS

Gotherman & Babbitt, Ohio Municipal Law, Text 26.07, 26.12, 26.13(A)(B)

Am. Sub. S. B. No. 19

**SECTION 3. (A)** Except as otherwise provided in division (B) of this section, the amendments made by this act to sections 3735.67 and 3735.68 and the enactment of sections 3735.671, 3735.672, and 3735.673 of the Revised Code apply only to community reinvestment areas described in resolutions adopted under section 3735.66 of the Revised Code on or after July 1, 1994, and to applications for exemption from taxation under section 3735.67 of the Revised Code for property within community reinvestment areas described in such resolutions and filed with housing officers on or after that date.

**(B)** The amendments or enactments by this act of sections 3735.67, 3735.671, 3735.672, 3735.673, and 3735.68 of the Revised Code do not apply, and those sections in effect prior to those amendments do apply, to any exemption to be granted based upon or pursuant to any resolution or ordinance enacted under section 3735.66 of the Revised Code prior to the effective date of those amendments or enactments. In addition, those amendments and enactments do not apply, and those sections as in effect prior to those amendments do apply, to the first two amendments to such ordinance or resolution, including amendments of such resolution or ordinance made after the effective date of the amendments or enactments to those sections by this act, which grant an extension of the date after which the granting of tax exemptions may be terminated pursuant to the provisions of such resolution or ordinance, provided each such extension does not exceed five years and provided further that the applicable housing officer determines in writing, which determination shall be conclusive, that good faith efforts and material progress have been made toward the investments, including but not limited to existing or new buildings, machinery, equipment, furniture, and fixtures, of a nature contemplated in connection with the adoption of any such resolution or ordinance being amended.