IN THE SUPREME COURT OF OHIO

Worthington City Schools Board of Education, et al.	:	
	:	Case No.
Appellee,	:	
	:	On Appeal from the Franklin County
v.	:	Court of Appeals, Tenth Appellate District
	:	
Franklin County Board of Revision, et al.,	:	Court of Appeals Case No. 22-AP-751
	:	
Appellees,	:	
	:	
and	:	
	:	
District at Linworth TIC 1, LLC,	:	
District at Linworth TIC 2, LLC,	:	
District at Linworth TIC 3, LLC,	:	
District at Linworth TIC 4, LLC,	:	
District at Linworth TIC 5, LLC, and	:	
District at Linworth TIC 6, LLC,	:	
	:	
Appellants.	:	

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANTS DISTRICT AT LINWORTH TIC 1, LLC; DISTRICT AT LINWORTH TIC 2, LLC; DISTRICT AT LINWORTH TIC 3, LLC; DISTRICT AT LINWORTH TIC 4, LLC; DISTRICT AT LINWORTH TIC 5, LLC; AND DISTRICT AT LINWORTH TIC 6, LLC

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TABLE OF CONTENTS

THIS CASE IS OF PUBLIC OR GREAT GENERAL INTEREST

The Ohio Board of Tax Appeals ("BTA") has whatever jurisdiction the General Assembly gives it. *See Steward v. Evatt*, 143 Ohio St. 547, 56 N.E.2d 159 (1944), paragraph one of the syllabus. It lacks whatever jurisdiction the General Assembly takes away. *See id*. For many years, the BTA had jurisdiction to hear a school board's appeal from a decision of a county board of revision. That changed in 2022, when the General Assembly passed 2022 Am. Sub. H.B. No. 126 ("H.B. 126"), taking away the BTA's jurisdiction to hear most school board appeals. The BTA jurisdiction statute at issue here, R.C. 5717.01, now provides that "a subdivision that files an original complaint or counter-complaint under [R.C. 5715.19] with respect to property the subdivision does not own or lease may not appeal the decision of the board of revision with respect to that original complaint or counter-complaint."

This case involves a board of revision complaint filed before, and decision issued after, H.B. 126 went into effect. When the school board tried to appeal the board of revision's decision, the BTA dismissed the matter, finding that the school board's lack of standing to appeal deprived it of jurisdiction. The Tenth District Court of Appeals reversed and remanded, holding that amended R.C. 5717.01's general prohibition against subdivision appeals did not apply because the matter did not involve an "original complaint or counter-complaint" filed under R.C. 5715.19, as amended by H.B. 126. *New Albany-Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 22AP-732, 2023-Ohio-3806, ¶ 25-35. In other words, the Tenth District concluded that a school board still has the right to appeal a board of revision decision if the underlying complaint was filed before H.B. 126's effective date.

At its most basic level, this case presents the issue whether the BTA has jurisdiction to hear any appeal by a school board from a board of revision decision issued after H.B. 126's effective date. This court has already recognized that this is an issue of public or great general interest.

Several weeks ago, it accepted jurisdiction to consider the very same question in *Marysville Exempted Village School Dist. Bd. of Edn. v. Union Cty. Bd. of Revision*, case No. 2023-0964. *10/24/2023 Case Announcements*, 2023-Ohio-3789. In *Marysville*, the Third District Court of Appeals held that amended R.C. 5717.01 does not apply to a case in which the complaint was filed with a board of revision before H.B. 126's effective date. *Marysville Exempted Village School Dist. Bd. of Edn. v. Union Cty. Bd. of Revision*, 3d Dist. Union No. 14-23-03, 2023-Ohio-2020, ¶ 37. At a minimum, this court should accept jurisdiction and hold this case pending a decision in case No. 2023-0964.

But there is a good reason for the court to order this case to be fully briefed and argued alongside case No. 2023-0964. Although the Third District and the Tenth District rendered the same judgments—reversing and remanding to the BTA—their rationales were quite different. The Third District held that amended R.C. 5717.01 applies only to cases involving post-amendment complaints because the statute refers in the present tense to "a subdivision that *files* an original complaint or counter-complaint." (Emphasis added.) According to the Third District, "the use of the present tense 'files' indicates an intention that the statute only be applied prospectively." *Marysville*, 2023-Ohio-2020, at ¶30. The Tenth District, in contrast, held that amended R.C. 5717.01 did not apply because, in its view, a pre-amendment case cannot involve an "original complaint" or a "counter complaint," as those terms are defined in the amended statute.

There is a real risk that the appellant in case No. 2023-0964 will not fully address the Tenth District's distinct rationale. Not only will the interests of the appellants in this case not be adequately represented, important arguments might elude this court's review. To avoid that result, District at Linworth TIC 1, LLC, District at Linworth TIC 2, LLC, District at Linworth TIC 3, LLC, District at Linworth TIC 4, LLC, District at Linworth TIC 5, LLC, and District at Linworth

TIC 6, LLC (collectively "District at Linworth," or "Appellants") ask the court to accept jurisdiction and order briefing and argument.

STATEMENT OF THE CASE AND FACTS

H.B. 126 was intended to modify the procedures by which Ohio localities may prosecute complaints to increase property values through the board of revision process and to limit tactics described as "abusive." *Ohio House Bill 126, First Hearing on H.B. 126 Before the H. Ways and Means Comm.*, *Sponsor Testimony of Representative Derek Merrin, Chair, Ways & Means Comm.*, 134th General Assemb. (Feb. 23, 2021) at 1. Real property in each county in Ohio must generally be appraised for tax purposes at its true value and assessed at its taxable value by that county's auditor. R.C. 5713.01. County boards of revision are authorized by statute to hear complaints and to revise assessments of real property for purposes of taxation. R.C. 5715.01(B). Certain parties are authorized to file complaints before the board of revision challenging the auditor's valuation or assessment, and the most common of these authorized parties are the property owner, certain commercial or industrial lessees, and school boards with any territory in the county. R.C. 5715.19.

School boards typically receive a significant portion of their funding from property taxes. An increase in a property's true value will typically result an increase in the property's taxes, particularly when this increase comes through the board of revision process, rather than a county-wide reappraisal or update. Because county auditors generally reappraise property values every sixth year and only update property values every third year between reappraisals, school boards are incentivized to file complaints to increase property values. H.B. 126 came in response to the sentiment by many property owners that school boards were filing frequent and unwarranted complaints, particularly when the property owner's costs of defending against the complaint through the appeals process approached or exceeded the potential tax increase. Moreover, in many cases, protracted appeals resulted in tax increases to property owners many months or years after

the tax year at issue. This delay could be a particular hardship to a purchaser after acquiring a property, unable to share the burden of increased taxes with the seller for periods in which the purchaser did not even own the property.

According to testimony by the bill's sponsor before the Ohio House Ways & Means Committee, only 12 other states give local governments authority similar to the power localities in Ohio have to file complaints to increase property values for tax purposes. *Ohio House Bill 126, First Hearing on H.B. 126 Before the H. Ways and Means Comm.*, *Sponsor Testimony of Representative Derek Merrin, Chair, Ways & Means Comm.*, 134th General Assemb. (Feb. 23, 2021) at 1. This testimony described how harmful the practice had become in Ohio in recent years, and it recounted the negative implications for both commercial and residential property owners and for Ohio's business climate. *Id.* at 1-2.

The H.B. 126 sponsor testimony stated the goal of the bill was to make the board of revision process more "fair, transparent, and accountable to the citizens of Ohio[,]" particularly as it pertains to complaints filed by legislative authorities. *Id at 3*. H.B. 126 did this primarily through four changes to Ohio's property tax appeals process. First, it placed limitations on the ability of legislative authorities of subdivisions, including school boards, to initiate proceedings to increase the value of others' property. It required that going forward, increase complaints must be based on the sale of the property in an arms' length transaction before the tax lien date, and that the sale price in that transaction exceed the county auditor's true value for the property by more than 10% and $500,000 (indexed to inflation). Second, it required that before a subdivision files a complaint, the legislative authority first adopt a resolution authorizing the filing of that complaint at a public meeting, and provide notice of that meeting to the property owner. Third, it prohibited "private payment agreements," or settlements between school boards and property owners that, among other things, allowed payment to the school board without an increase in the true value for tax

purposes approved by the auditor and reflected on the tax list. Finally, it eliminated the BTA's jurisdiction to hear appeals by subdivisions from board of revision decisions when the subdivision does not own or lease the property at issue in the case.

The Worthington City Schools Board of Education (the "School Board") initiated this case on July 11, 2022 by filing a letter with the Franklin County Board of Revision to invoke that board's continuing complaint jurisdiction to increase the tax year 2020 value of District at Linworth's property, Franklin County Auditor's parcel 610-198849-00 (the "Subject Property"). The complaint the School Board alleges gives rise to continuing complaint jurisdiction in this case was filed on March 21, 2019, and challenged the tax year 2018 value of the Subject Property. After the School Board filed its complaint, but before it filed its letter, the General Assembly enacted H.B. 126 on April 6, 2022, which was signed by the governor on April 20, 2022. The Franklin County Board of Revision rendered a decision affirming the Franklin County Auditor's tax year 2020 value on September 23, 2022, and it is undisputed that H.B. 126 took effect on July 21, 2022, prior to the Board of Revision' decision. *Worthington City Schs. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 22AP-751 (Dec. 1, 2023), ¶ 23, citing *State ex rel. Ohio Gen. Assembly v. Brunner*, 115 Ohio St.3d 103, 2007-Ohio-4460, ¶ 9, and Article II, Section 1c, Ohio Constitution.

Uncodified language in Section 3(A) of H.B. 126 delayed the application of the amendments to R.C. 5715.19, except for the amendment of R.C. 5715.19(I), to any "original complaint" or "counter-complaint," as those terms are defined in R.C. 5715.19, filed for tax year 2022 or later. However, nothing in H.B. 126 delayed the effective date of the law, and nothing delayed the application of the remainder of H.B. 126, including the amendments to R.C. 5717.01 at issue in this case.

After the Franklin County Board of Revision rendered its decision dismissing the School Board's complaint in this case on September 23, 2022, the School Board filed an appeal with the Franklin County Court of Common Pleas, Case No. 22-CV-7379, and a parallel appeal with the BTA, BTA No. 2022-1714. The Franklin County Court of Common Pleas stayed the appeal before it, pending resolution of the BTA's jurisdiction. *Worthington City Schs. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, No. 22-CV-007379 (Dec. 15, 2022) (entry granting appellant's motion to stay proceedings). District at Linworth filed a motion to dismiss with the BTA, which it granted, finding it lacked jurisdiction to hear the appeal because the School Board did not own or lease the property at issue in the case. *Worthington City Schs. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, BTA No. 2022-1741, 2022 Ohio Tax LEXIS 2761 (Dec. 6, 2022).

The School Board thereafter appealed the BTA's dismissal to the Tenth District Court of Appeals on December 8, 2022. *Worthington City Schs. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, BTA No. 2022-1741, 2022 Ohio Tax LEXIS 2761 (Dec. 6, 2022), *appeal docketed*, 10th Dist. Franklin No. 22AP-751 (Dec. 8, 2022). On December 12, 2022, the School Board moved the Tenth District Court of Appeals to coordinate this case with several other cases on appeal involving the same legal issue, which motion the court granted on December 13, 2022. *Worthington City Schs. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 22AP-751 (Dec. 13, 2022)(entry granting appellants' motion to coordinate).[1] On June 7, 2023, the Tenth District held oral arguments, and subsequently rendered its decision in the case on December 1, 2023, entering judgment that same day. *Worthington City Schs. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, No.

[1] The Court of Appeals subsequently granted the School Board's motion to consolidate the coordinated cases for the limited purposes of oral argument and decision. The Court of Appeals rendered a decision in Case No. 22AP-732 on October 19, 2023 acknowledging the cases were coordinated on appeal, and entered a judgment entry for Case No. 22AP-732 on October 23, 2023. No judgment was entered for this case, No. 22AP-751, until December 1, 2023, when a separate decision was issued and judgment entered for case No. 22AP-751. District at Linworth also seeks this court's review of another case, No. 22AP-750, involving the same parties and the same property as this case in a different tax year.

22AP-751 (Dec. 1, 2023) (Decision and Judgment Entry). District at Linworth asks this court to review and reverse that decision.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

I. <u>Proposition of Law No. I</u>: R.C. 5717.01, as amended by Am. Sub. H.B. 126, does not give the Ohio Board of Tax Appeals jurisdiction to hear an appeal filed by a board of education with respect to a decision of a county board of revision rendered after July 21, 2022 when that board of education neither owns nor leases the property that is the subject of the board of revision's decision.

The effective date of amended R.C. 5717.01, and its applicability to decisions of county boards of revision, is independent of the H.B. 126 amendments to R.C. 5715.19. Section 3(A) of H.B. 126 delays only the applicability of the amendments in R.C. 5715.19. Nothing in H.B. 126 delays the applicability of the amendments to R.C. 5717.01 or R.C. 4503.06. Accordingly, the limitation of the BTA's jurisdiction in R.C. 5717.01 was effective on July 21, 2022, which predates the Franklin County Board of Revision's decision on August 17, 2022.

The BTA's jurisdiction to hear appeals in R.C. 5717.01 is triggered by a board of revision rendering a decision, not the filing of a complaint. R.C. 5717.01 determines the jurisdiction of the BTA to hear appeals from a county board of revision. As amended by H.B. 126, it states, in relevant part:

> An appeal from a decision of a county board of revision may be taken to the board of tax appeals within thirty days after notice of the decision of the county board of revision is mailed as provided in division (A) of section 5715.20 of the Revised Code. Such an appeal may be taken by the county auditor, the tax commissioner, or any board, legislative authority, public official, or taxpayer authorized by section 5715.19 of the Revised Code to file complaints against valuations or assessments with the auditor, *except that a subdivision that files an original complaint or counter-complaint under that section with respect to property the subdivision does not own or lease may not appeal the decision of the board of revision with respect to that original complaint or counter-complaint*.

(Emphasis added.) The first clause of the second sentence quoted above defines the class of persons with standing to file appeals to the BTA in part by reference to the class of persons authorized to file complaints under R.C. 5715.19. The second clause, added by H.B. 126 and italicized here,

creates an exception to standing for a subset of those so authorized. Use of the present tense verb "files" in the exception to those with standing to appeal reflects use of the potential mood for the verb. This use describes a subdivision's capacity to file complaints under R.C. 5715.19, and does not refer to a specific complaint that has been filed.

The Tenth District Court of Appeals erroneously believed the legislature's use of the terms "original complaint" and "counter-complaint" in this exception meant that the legislature intended to incorporate the entirety of the R.C. 5715.19 amendments into the exception to the BTA's jurisdiction in R.C. 5717.01, and that the failure to read the statute this way would render the use of these two terms in the exception meaningless. *Worthington City Schs. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 22AP-751 (Dec. 1, 2023), ¶ 35. This was incorrect; the General Assembly included both terms—"original complaint" and "counter-complaint"—to broaden the exception and to clarify that it applies regardless of whether the subdivision filed an original complaint or a counter-complaint in the case. Failure to so specify might have been construed to allow appeals to the BTA in which the subdivision was the counter-complainant. The use of both terms merely reflects the legislature's intention to make the prohibition on subdivision appeals to the BTA a complete bar when the subdivision does not own or lease the property at issue.

The Tenth District further erred in concluding that a board of revision decision on a complaint filed prior to the effective date of H.B. 126 is not a decision on an "original complaint" or a "counter-complaint." Under both the definitions codified by H.B. 126 and the definitions existing before enactment, a complaint filed under R.C. 5719(A) is an original complaint, and one filed under R.C. 5715.19(B) is a counter-complaint. *See*, *e.g.*, *Novita Industries, L.L.C. v. Lorain Cty. Bd. of Revision*, 153 Ohio St.3d 57, 2018-Ohio-2023, ¶ 5 ("On July 14, 2014, Novita initiated the present proceedings by filing a DTE Form 1, the officially prescribed form for original

complaints under R.C. 5715.19 (A); the form explicitly placed tax years 2012 and 2013 at issue.") The codification of these definitions did not change the types of filings to which these terms refer.

The Tenth District reached its conclusion that the newly enacted definitions refer only to post-enactment R.C. 5715.19(A) and (B) by construing R.C. 5715.19 and R.C. 5717.01 *in pari materia*. This analytical aide to statutory construction is unnecessary because there is no ambiguity in the text of R.C. 5717.01 or in the uncodified language of Section 3(A) of H.B. 126. In the alternative, should this court find R.C. 5717.01 ambiguous, construction *in pari materia* with R.C. 5715.19 does not, by necessity, lead to the conclusion the Tenth District reached because the two statutes are not in conflict with one another, and the construction advanced by District at Linworth advances the legislature's intention of limiting property tax appeals.

The terms "original complaint" and "counter-complaint" used in amended R.C. 5717.01 have the meanings ascribed to them as developed by Ohio case law and ordinary meaning. Use of the terms "original complaint" to refer to a R.C. 5715.19(A) complaint, and "counter-complaint" to refer to a R.C. 5715.19(B) complaint, is longstanding. *See, e.g.*, *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 155 Ohio St.3d 247, 2018-Ohio-4286, ¶ 4 ("The school board filed a countercomplaint seeking retention of the auditor's value"); *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, 59 N.E.3d 1270, ¶ 9 (referring to "a case in which the property owner either filed the original complaint, as here, or filed a countercomplaint"); *Dayton Supply & Tool Co. v. Montgomery Cty. Bd. of Revision*, BTA No. 2003-G-1851, 2005 Ohio Tax LEXIS 859, *3 (July 8, 2005) ("We have consistently held that if the original complaint is found to be defective, then the counter-complaint must be dismissed"). The School Board's complaint in this case was filed pursuant to R.C. 5715.19(A), and the School Board checked the "original complaint" box on its DTE Form 1, making the School Board's complaint an "original complaint" by any understanding, and making

the School Board a subdivision covered by the exception in R.C. 5717.01. It was error for the Tenth District to hold otherwise.

In defining the scope of the exclusion from parties with standing to file BTA appeals from board of revision decisions, the exception to the BTA's jurisdiction in amended R.C. 5717.01 refers to a subdivision "that files an original complaint or counter-complaint under" R.C. 5715.19. This is in stark contrast to the language used in the uncodified language of Section 3(A) of H.B. 126, which states that the amendment of R.C. 5715.19 "applies to any original complaint or counter-complaint, **as those terms are defined in that section**, filed for tax year 2022 or any tax year thereafter." (Emphasis added.) The legislative choice to *not* use the phrase "as defined in" or "as defined by" R.C. 5715.19 in amended R.C. 5717.01 makes clear that the limitation of the BTA's jurisdiction operates independently of the definitions provided in R.C. 5715.19 as amended by H.B. 126.

II. Proposition of Law No II: R.C. 5717.01, as amended by Am. Sub. H.B. 126, applies prospectively and is not retroactive in application.

The limitation of the BTA's jurisdiction in amended R.C. 5717.01 is prospective in its operation. The BTA's jurisdiction to hear board of revision appeals under R.C. 5717.01 is based on the existence of a decision of a county board of revision, not the filing of a complaint or counter-complaint. An appellant's standing to appeal the decision of a board of revision under R.C. 5717.01 does not arise until the board of revision has rendered that decision. Any assertion that amended R.C. 5717.01 operates retroactively runs counter to the canon of construction in R.C. 1.48 that all laws are presumed to operate prospectively. Moreover, without conceding that R.C. 5717.01 did not operate retroactively, a school board is without grounds to challenge retroactivity under Article II, Section 28, Ohio Constitution. *Toledo City Sch. Dist. Bd. of Educ. v. State Bd. of Educ. of Ohio*, 146 Ohio St.3d 356, 2016-Ohio-2806, 56 N.E.3d 950, ¶ 2.

The determination of a party's standing to file an appeal by reference to ownership or leasing of the property or the type of complaint filed is nothing more than a reference to antecedent facts. *United Engineering & Foundry Co. v. Bowers*, 171 Ohio St. 279, 282, 13 O.O.2d 240, 169 N.E.2d 697(1960) ("[a] statute is not retroactive merely because it draws on antecedent facts for a criterion in its operation"). Consideration, at the time a subdivision seeks to appeal, of the ownership of the property that is the subject of the board of revision's decision does not impose new legal burdens on a putative appellant based on a prior legal adjudication. *Cf. State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, 871 N.E.2d 1167 (finding legislation subjecting those convicted of or who pled guilty to certain crimes to new DNA specimen collection procedures long after conviction or plea to be unconstitutionally retroactive). Nor does consideration of a subdivision's ownership of the property that is the subject of the board of revision's decision at the time it seeks to appeal deprive the subdivision of an existing legal right, when a decision has not yet been rendered. *See*, *e.g.*, *Bode v. Welch*, 29 Ohio St. 19 (1875)(permitting appeal to proceed where legislative enactment would have deprived appellant of standing after entry of judgment and before perfection of appeal); *see also Nationwide Mut. Ins. Co. v. Ohio Dept. of Transp.*, 61 Ohio Misc. 761, 766-767, 584 N.E.2d 1370 (Ct. of Cl. 1990) ("no right to appeal arises, accrues, or vests until one first receives an adverse judgment from a court"). Accordingly, the limitation of the BTA's jurisdiction in R.C. 5717.01 is prospective in operation.

A 2017 amendment of R.C. 5717.04 eliminated standing to appeal all BTA decisions to this court as a matter of right (until enactment of 2018 Sub. H.B. 292). That 2017 amendment offers a model for how this court should understand the amendment at issue here. The General Assembly eliminated the direct right to appeal all BTA cases to this court by enacting 2017 Am. Sub. House Bill 49 ("H.B. 49"), effective September 29, 2017. In response, this court thereafter amended its own Rules of Practice to be consistent with the statutory change, applying the new

jurisdictional limitation to cases filed with the BTA prior to H.B. 49's effective date, but decided after it. *See North Ridgeville City Schs. Bd. of Educ. v. Lorain Cty. Bd. of Revision*, BTA No. 2022-1152, 2022 Ohio Tax LEXIS 2518 (Oct. 31, 2022) at *9, citing *Viola Assocs., L.L.C. v. Lorain Cty. Bd. of Revision*, 154 Ohio St.3d 1437, 2018-Ohio-4732, 112 N.E.3d 923 (denying a petition to transfer jurisdiction for an appeal filed with the BTA in 2016, relating to tax year 2015, and decided by the BTA on July 11, 2018). *See also* S.Ct.Prac.R. 10.01 (regulating the institution of appeals from BTA decisions, amended effective September 29, 2017, and September 13, 2018). In the case of R.C. 5717.04, standing to appeal to this court was not determined by the date of a filing in a lower tribunal.

The H.B. 49 amendment of R.C. 5717.04 to limit standing to this court for appeals from the BTA is analogous to the H.B. 126 amendment of R.C. 5717.01, in that R.C. 5717.04 also ostensibly relied upon the existence of a decision rendered before the effective date of H.B. 49 to vest a putative appellant with standing. As noted above, legislation altering a tribunal's jurisdiction or a party's standing to appeal a lower body's decision before that lower body has rendered its decision does not deprive a party of a right to appeal. *See*, *e.g.*, *Bode v. Welch*, 29 Ohio St. 19 (1875); *see also Nationwide Mut. Ins. Co. v. Ohio Dept. of Transp.*, 61 Ohio Misc. 761, 584 N.E.2d 1370 (Ct. of Cl. 1990). The standing of parties before this court after the enactment of H.B. 49 makes it clear that a subdivision party to an undecided case pending before a board of revision had no right to appeal to the BTA before H.B. 126 took effect and was not deprived of any right by H.B. 126 taking effect prior to a decision in the case.

CONCLUSION

For the foregoing reasons, District at Linworth respectfully requests that this court accept jurisdiction, order briefing and argument, and reverse the judgment of the Tenth District Court of

Appeals, holding that the School Board lacked standing to appeal the decision of the Franklin County Board of Revision to the BTA.

Respectfully submitted,

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District at Linworth TIC 5, LLC, and
District at Linworth TIC 6, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that Appellants' Memorandum in Support of Jurisdiction was filed electronically through the Supreme Court of Ohio's E-Filing Portal on December 7, 2023, with copies of the foregoing also served electronically on December 7, 2023, upon:

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District at Linworth TIC 5, LLC, and
District at Linworth TIC 6, LLC

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

New Albany-Plain Local Schools Board of Education et al.,	:	
Appellants-Appellants,	:	Nos. 22AP-732, 22AP-733, 22AP-737, 22AP-738, 22AP-743, 22AP-744, 22AP-746, 22AP-747, 22AP-748, 22AP-749, 22AP-750, & 22AP-751
v.	:	
Franklin County Board of Revision et al.,	:	(BTA Nos. 2022-1515, 2022-1260, 2022-1507, 2022-1503, 2022-1501, 2022-1708, 2022-1446, 2022-1447, 2022-1448, 2022-1449, 2022-14311, & 2022-1714)
Appellees-Appellees.	:	
	:	(REGULAR CALENDAR)
	:	

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on December 1 2023, we sustain the boards of education's eighth and ninth assignments of error and deny their remaining assignments of error as moot. We accordingly reverse the decisions of the BTA and remand these appeals to the BTA for further proceedings consistent with this decision and the law. Any outstanding appellate court costs are waived.

BOGGS, MENTEL, & LELAND, JJ. concur.

/S/ JUDGE
Judge Kristin Boggs

Tenth District Court of Appeals

Date: 12-01-2023

Case Title: WORTHINGTON CITY SCHOOLS BOARD OF EDUCAT -VS- FRANKLIN COUNTY BOARD OF REVISION

Case Number: 22AP000751

Type: JEJ - JUDGMENT ENTRY

So Ordered

/s/ Judge Kristin S. Boggs

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

New Albany-Plain Local Schools Board of Education et al.,	:	
Appellants-Appellants,	:	Nos. 22AP-732, 22AP-733, 22AP-737, 22AP-738, 22AP-743, 22AP-744, 22AP-746, 22AP-747, 22AP-748, 22AP-749, 22AP-750, & 22AP-751
v.	:	
Franklin County Board of Revision et al.,	:	(BTA Nos. 2022-1515, 2022-1260, 2022-1507, 2022-1503, 2022-1501, 2022-1708, 2022-1446, 2022-1447, 2022-1448, 2022-1449, 2022-14311, & 2022-1714)
Appellees-Appellees.	:	
	:	(REGULAR CALENDAR)
	:	

D E C I S I O N

Rendered on December 1, 2023

On brief: *Rich & Gillis Law Group*, *LLC*, *Mark H. Gillis*, and *Kelley A. Gorry*, for appellants.

On brief: *Zaino Hall & Farrin*, *LLC*, *Steven K. Hall*, and *Robert C. Maier*, for appellee ANSA Propco Partnership, LP.

On brief: *Vesha Law Firm*, *LLC*, *Sterling Weiser*, *Nicholas C. Vesha*, and *Jim Lewis*, for appellees Dhanlazmi, LLC, and Riaan Raman, LLC.

On brief: *Bailey Cavalieri*, *LLC*, *Joshua D. DiYanni*, and *Graycen M. Wood*, for appellees 32 Viotis Dr., LLC, Eakin Place Holdings, LLC, and Eakin Brooksedge Apartments, LLC.

On brief: *Dinsmore & Shohl, LLP*, and *Kelvin M. Lawrence*, for appellees UHS-161 N. Fourth, LLC; District at Linworth TIC1, LLC; District at Linworth TIC2, LLC; District at Linworth TIC3, LLC; District at Linworth TIC4, LLC; District at Linworth TIC5, LLC, and; District at Linworth TIC6, LLC.

On brief: *G. Gary Tyack*, Prosecuting Attorney, and *William J. Stehle*, for appellees Franklin County Auditor and Board of Revision.

APPEALS from the Ohio Board of Tax Appeals

BOGGS, J.

{¶ 1} Presently before this court are 12 appeals from 8 decisions of the Ohio Board of Tax Appeals ("BTA"), in each of which the BTA dismissed for lack of jurisdiction an appeal from a decision of the Franklin County Board of Revision ("BOR"). Appellants are the New Albany-Plain Local Schools Board of Education (case No. 22AP-732), the South-Western City Schools Board of Education (case Nos. 22AP-733, 22AP-737, and 22AP-738), the Columbus City Schools Board of Education (case Nos. 22AP-743, 22AP-744, 22AP-746, 22AP-747, 22AP-748, and 22AP-749), and the Worthington City Schools Board of Education (case Nos. 22AP-750 and 22AP-751). Appellees in each appeal include the BOR, the Franklin County Auditor, the Ohio Tax Commissioner, and the owner or owners of the properties at issue. At appellants' request, this court has coordinated these appeals for purposes of oral argument and determination. (Dec. 13, 2022 Journal Entry.) For the following reasons, we reverse the BTA's decisions.

I. FACTS AND PROCEDURAL BACKGROUND

{¶ 2} Each of these appeals stems from a decision of the BTA dismissing for lack of jurisdiction an appellant board of education's appeal of a decision of the BOR, concerning the valuation of property located within their respective school districts for tax year 2021. In dismissing the appeals, the BTA relied on its recent decision in *North Ridgeville City Schools Bd. of Edn. v. Lorain Cty. Bd. of Revision*, BTA No. 2022-1152, 2022 Ohio Tax LEXIS 2518 (Oct. 31, 2022). In *North Ridgeville*, the BTA applied recent amendments to R.C. 5717.01, the statute that governs appeals to the BTA, enacted by 2022 Am.Sub.H.B. No. 126 ("H.B. 126"). The BTA stated that, as amended, R.C. 5717.01 prohibits a board of education from appealing a board of revision's decision regarding the valuation of property the board of education does not own or lease. *Id.* at *4. Applying that reasoning in these appeals, the BTA held that it lacked jurisdiction because the appellants boards of education did not own or lease the properties at issue.

{¶ 3} In their appeals to this court, the boards of education argue that the BTA's analysis in *North Ridgeville* was erroneous and that the H.B. 126 amendments to R.C. 5717.01, upon which the BTA relied, are inapplicable.

II. ASSIGNMENTS OF ERROR

{¶ 4} In each of the 12 appeals before this court, the appellants boards of education raise 11 identical assignments of error:

> 1. The Decision is unreasonable and unlawful because the BTA relied solely upon its erroneous decision in *North Ridgeville*[.]
>
> 2. The Decision is unreasonable and unlawful because in *North Ridgeville*, the BTA ignored the plain meaning of the unambiguous words the General Assembly used in the revisions to R.C. 5717.01[.]
>
> 3. The BTA committed legal error in *North Ridgeville* by failing to recognize that the General Assembly's use of the phrase "a subdivision that files" in R.C. 5717.01 as the operative language in present tense applies prospectively only [to] present and future actions and does not include past actions[.]
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> 4. The Decision is unreasonable and unlawful because the BTA failed to apply the rules of grammar and violated the rules of statutory construction in *North Ridgeville* in interpreting the present tense language in R.C. 5717.01 as including any complaints filed prior to the effective date of the legislation[.]
>
> 5. The BTA committed legal error in *North Ridgeville* after correctly determining that the revisions to R.C. 5717.01 are clear and unambiguous but then utilizing the General Assembly's perceived legislative intent as support for its interpretation of the revisions directly inconsistent with the actual words used by the General Assembly[.]
>
> 6. The BTA committed legal error in *North Ridgeville* by rewriting the language of the revisions to R.C. 5717.01 as follows: "except that a subdivision with respect to property the subdivision does not own or lease may not appeal the decision of the board of revision." *North Ridgeville*, at *2 ("Therefore, we hold that boards of education now have no appeal rights to this Board unless the board of education owns or leases the property"); *Id.* at *5 ("***in order to lawfully appeal a board of revision decision to this Board, the appellant cannot be a subdivision that does not own or lease the property at issue in the original complaint").

> 7. The Decision is unreasonable and unlawful as the BTA failed to recognize in *North Ridgeville* that the General Assembly's retention of the former appeal right in R.C. 5717.01 preserves the existing appeal rights of those entities for any complaint filed prior to the effective date of the revisions[.]
>
> 8. The BTA committed legal error in *North Ridgeville* by concluding that the revisions to R.C. 5717.01 did not incorporate the new definitions of "subdivision" [or rather "legislative authority of a subdivision"], "original complaint" and "counter-complaint" from revised R.C. 5715.19, effective for tax year 2022, when the plain meaning of the language used by the General Assembly in the revisions to R.C. 5717.01 clearly and unambiguously incorporates these definitions[.]
>
> 9. The Decision is unreasonable and unlawful because the BTA held in *North Ridgeville* that the new definitions in R.C. 5715.19, effective for tax year 2022, had no new meaning when the General Assembly retained the terms "board", "legislative authority", "public official", and "complaints" from former R.C. 5717.01 in the revisions to R.C. 5717.01[.]
>
> 10. The BTA erred in *North Ridgeville* in concluding that "jurisdiction is not conferred on appeal merely because the underlying cause of action was validly filed" when Appellant Board of Education never argued that the right to appeal was vested in a validly filed complaint[.]
>
> 11. The BTA erred in *North Ridgeville* by comparing the revisions to R.C. 5717.01 to the revisions to R.C. 5717.04 because the language the General Assembly used in the revisions to R.C. 5717.04 is not even remotely comparable to the words the General Assembly used in the revisions to R.C. 5717.01[.]

(Emphasis sic.) (Appellants' Briefs at 1-5.) The assignments of error identify what the appellants contend are legal errors in the *North Ridgeville* decision since the BTA's decisions in these appeals contain little analysis beyond citation to *North Ridgeville*.

III. STANDARD OF REVIEW

{¶ 5} "When reviewing a BTA decision, we determine whether the decision is reasonable and lawful; if it is both, we must affirm." *NWD 300 Spring L.L.C. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 193, 2017-Ohio-7579, ¶ 13, citing R.C. 5717.04. The BTA's factual findings are entitled to deference if they are supported by reliable and probative evidence, but an appellate court " 'will not hesitate to reverse a BTA decision that

is based on an incorrect legal conclusion.' " *Westerville City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 146 Ohio St.3d 412, 2016-Ohio-1506, ¶ 26, quoting *Gahanna-Jefferson Local School Dist. Bd. of Edn. v. Zaino*, 93 Ohio St.3d 231, 232 (2001). We review questions of law, including questions of statutory interpretation, de novo. *Sheffield Crossing Station, L.L.C. v. Lorain Cty. Bd. of Revision*, 10th Dist. No. 19AP-687, 2020-Ohio-6938, ¶ 3; *Rock City Church v. Franklin Cty. Bd. of Revision*, 10th Dist. No. 22AP-372, 2023-Ohio-1339, ¶ 5, citing *Thomas v. Logue,* 10th Dist. No. 21AP-385, 2022-Ohio-1603, ¶ 12.

{¶ 6} These appeals present legal questions regarding the BTA's jurisdiction, resolution of which turns on the proper application of R.C. 5717.01. *See Ross v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 373, 2018-Ohio-4746, ¶ 8. Specifically, we must determine the impact of the H.B. 126 amendments to R.C. 5717.01, and whether those amendments apply to an appeal on a complaint that was filed before the H.B. 126 amendments took effect if the decision being appealed was issued after the effective date of the H.B. 126 amendments. These are questions of law that we review de novo.

IV. ANALYSIS

{¶ 7} The BTA, county boards of revision, and boards of education are all creatures of statute, and as such they have only the jurisdiction, power, and duties the General Assembly has expressly given them. *Ross* at ¶ 9, citing *Steward v. Evatt*, 143 Ohio St. 547 (1944), paragraph one of the syllabus; *Kohl's Illinois, Inc. v. Marion Cty. Bd. of Revision*, 140 Ohio St.3d 522, 2014-Ohio-4353, ¶ 23; *Hall v. Lakeview Local School Dist. Bd. of Edn.*, 63 Ohio St.3d 380, 383 (1992). Here, we are concerned with the statutory authority of boards of education to challenge real-property valuations, their ability to appeal a board of revision's decision to the BTA, and the BTA's jurisdiction to adjudicate such an appeal.

{¶ 8} "[T]here is no inherent right to appeal an administrative decision; rather, the right must be conferred by statute." *Yanega v. Cuyahoga Cty. Bd. of Revision*, 156 Ohio St.3d 203, 2018-Ohio-5208, ¶ 10, citing *Midwest Fireworks Mfg. Co., Inc. v. Deerfield Twp. Bd. of Zoning Appeals*, 91 Ohio St.3d 174, 177 (2001). Moreover, " '[w]here a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred.' " *Id.*, quoting *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147 (1946), paragraph one of the syllabus. Accordingly, we turn to the statutory

framework that sets forth the process for filing challenges to real-property valuations for tax purposes and for appealing the determinations of those challenges.

A. R.C. 5715.19 and 5717.01

{¶ 9} R.C. 5715.19 outlines the procedure for challenging real-property valuations for tax purposes before a county board of revision, and R.C. 5717.01 sets out the procedure for appealing a board of revision's decision to the BTA. The statute most directly at issue here is R.C. 5717.01, which specifies, in part, who may appeal a board of revision's decision to the BTA. In R.C. 5717.01, however, the General Assembly ties the authority to file an appeal to the authority to file a complaint against valuations or assessments under R.C. 5715.19. R.C. 5717.01 only allows entities authorized by R.C. 5715.19 to file a complaint with the board of revision to appeal a decision to the BTA. Both statutes, therefore, inform our analysis.

{¶ 10} Under the pre-H.B. 126 version of R.C. 5717.01, and subject to an exception addressed below in the post-H.B. 126 version of the statute, "[a]n appeal from a decision of a county board of revision may be taken to the [BTA] * * * by * * * any board, legislative authority, public official, or taxpayer authorized by [R.C. 5715.19] to file complaints against valuations or assessments with the auditor," for determination by the county board of revision. Thus, to determine who may appeal a board of revision's decision to the BTA under R.C. 5717.01, we must turn to R.C. 5715.19 and its designation of who may file complaints against valuations or assessments.

{¶ 11} "R.C. 5715.19(A) 'establishes the jurisdictional gateway to obtaining review by the boards of revision' " of complaints relating to valuations or assessments of real property. *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 137 Ohio St.3d 266, 2013-Ohio-4627, ¶ 11, quoting *Toledo Pub. Schools Bd. of Edn. v. Lucas Cty. Bd. of Revision*, 124 Ohio St.3d 490, 2010-Ohio-253, ¶ 10. R.C. 5715.19(A)(1) authorizes the filing of a complaint against any of six enumerated determinations "for the current tax year," *id.*, including "[t]he determination of the total valuation or assessment of any parcel that appears on the tax list[.]" R.C. 5715.19(A)(1)(d).

{¶ 12} As to who may file a complaint, the pre-H.B. 126 version of R.C. 5715.19, which was in effect when the complaints underlying these appeals were filed, stated, in part:

> (A) * * * the board of county commissioners; * * * the board of township trustees of any township with territory within the county; *the board of education of any school district with any*

> *territory in the county*; or the mayor or legislative authority of any municipal corporation with any territory in the county may file such a complaint [*i.e.* "a complaint against any of the [enumerated] determinations for the current tax year"] regarding any such determination affecting any real property in the county[.]
>
> * * *
>
> (B) Within thirty days after the last date such complaints may be filed, the auditor shall give notice of each complaint in which the stated amount of overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination is at least seventeen thousand five hundred dollars in taxable value * * * to each board of education whose school district may be affected by the complaint. Within thirty days after receiving such notice, *a board of education * * * may file a complaint in support of or objecting to the amount of alleged overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination stated in a previously filed complaint or objecting to the current valuation.*

(Emphasis added.) There is no dispute that the appellants boards of education were authorized under the pre-H.B. 126 version of R.C. 5715.19(A) and/or (B) to file complaints regarding the valuations of the properties at issue. Nor is there any dispute that appellants—as "board[s]" authorized by R.C. 5715.19 to file complaints against valuations or assessments—would be authorized under the pre-H.B. 126 version of R.C. 5717.01 to appeal the BOR's decisions to the BTA.

B. H.B. 126

{¶ 13} In April 2022, while the underlying valuation challenges were pending before the BOR, the General Assembly enacted H.B. 126, which took effect on July 21, 2022. As relevant here, Section 1 of H.B. 126 amended R.C. 5715.19 and 5717.01, and Section 2 repealed the preexisting versions of those statutes. Section 3(A) of H.B. 126 states that, except for newly enacted R.C. 5715.19(I), which prohibits the settlement of property tax disputes through private-payment agreements, the amendments to R.C. 5715.19 "appl[y] to any original complaint or counter-complaint, as those terms are defined in that section,

filed for tax year 2022 or any tax year thereafter."[1] 2022 Am.Sub.H.B. No. 126, Section 3(A).

{¶ 14} As amended by H.B. 126, R.C. 5717.01 retains, without modification from the prior version of the statute, the designation of who may appeal a board of revision's decision to the BTA, but H.B. 126 added to R.C. 5717.01 an exception that limits the circumstances in which a political subdivision may appeal. As amended, R.C. 5717.01 states:

> An appeal from a decision of a county board of revision * * * may be taken by * * * any board, legislative authority, public official, or taxpayer authorized by [R.C. 5715.19] to file complaints against valuations or assessments with the auditor, *except that a subdivision that files an original complaint or counter-complaint under that section with respect to property the subdivision does not own or lease may not appeal the decision of the board of revision with respect to that original complaint or counter-complaint*.

(Emphasis added.)

{¶ 15} The exception, like the general rule, refers to R.C. 5715.19 to define its applicability, but it also uses three terms—"subdivision," "original complaint," and "counter-complaint"—that did not appear in the former version of R.C. 5715.19(A) or (B).[2] In amended R.C. 5715.19(A), the General Assembly defined "original complaint" as a complaint filed under R.C. 5715.19(A) and a "counter-complaint" as a complaint filed under R.C. 5715.19(B). The General Assembly did not define "subdivision" in amended R.C. 5715.19, but it is well-established that a school district is a political subdivision created by the General Assembly. *Avon Lake City School Dist. v. Limbach*, 35 Ohio St.3d 118, 122 (1988).

{¶ 16} The H.B. 126 amendments to R.C. 5715.19(A) rephrased but did not substantively alter the list of persons and entities authorized to file complaints against real-property valuations.[3] Amended R.C. 5715.19(A) and (B) state, in relevant part:

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[1] Section 3(B) of H.B. 126 states that R.C. 5715.19(I) applies to any private payment agreement entered into on or after the effective date of H.B. 126.

[2] There is one use of the term "original complaint" in former R.C. 5715.19(D), which addresses the continuing effect of an "original complaint" for the current tax year that the board of revision does not determine within the time prescribed.

[3] The General Assembly removed from that list the "board of county commissioners," the "board of township trustees of any township with territory in the county[,] the board of education of any school district with any territory in the county[,]" and the "legislative authority of any municipal corporation with any territory in the county," but it added to the list the more general "legislative authority of a subdivision." The General Assembly also added to R.C. 5715.19(A) a definition of "legislative authority," which includes "a board of county

> (A) * * * Subject to division (A)(6) of this section[4], * * * the legislative authority of a subdivision * * * may file such a complaint [*i.e.*, "a complaint against any of the [enumerated] determinations for the current tax year"] regarding any such determination affecting any real property in the county[.]
>
> (B) A board of education, subject to this division * * * may file a counter-complaint in support of or objecting to the amount of alleged overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination stated in a previously filed original complaint or objecting to the current valuation * * * only if the original complaint states an amount of overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination of at least [$17,500] in taxable value.

{¶ 17} The question before this court resolves to whether the H.B. 126 amendments to R.C. 5717.01—and particularly the newly added exception—apply to these appeals from BOR decisions issued after the July 21, 2022 effective date of H.B. 126. The BTA answered that question in the affirmative and held that the exception precluded the appellants boards of education from appealing the BOR's decisions. The boards of education, on the other hand, maintain that the exception cannot apply to an appeal of a board of revision's decision on a complaint against valuation or assessment filed prior to July 21, 2022.

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commissioners, a board of township trustees of any township with territory in the county, the board of education of any school district with territory in the county, or the legislative authority of a municipal corporation with territory in the county."

[4] R.C. 5715.19(A)(6) states, a "legislative authority of a subdivision * * * shall not file an original complaint with respect to property the subdivision * * * does not own or lease unless" both the following conditions are met:

> (a) If the complaint is based on a determination described in division (A)(1)(d) or (e) of this section, the property was (i) sold in an arm's length transaction, as described in section 5713.03 of the Revised Code, before, but not after, the tax lien date for the tax year for which the complaint is to be filed, and (ii) the sale price exceeds the true value of the property appearing on the tax list for that tax year by both ten per cent and the amount of the filing threshold determined under division (J) of this section;
> (b) If the complaint is filed by a legislative authority or mayor, the legislative authority or, in the case of a mayor, the legislative authority of the municipal corporation, first adopts a resolution authorizing the filing of the original complaint at a public meeting of the legislative authority.

C. *North Ridgeville*

{¶ 18} The BTA first considered the impact of the H.B. 126 amendments in *North Ridgeville*, 2022 Ohio Tax LEXIS 2518. It began by considering when the H.B. 126 amendments to R.C. 5717.01 took effect, and it held, "based on the straightforward application of [the] unambiguous law," that the amendments took effect on July 21, 2022, by operation of law. *Id.* at *6-7. The BTA acknowledged the General Assembly's statement in Section 3(A) of H.B. 126 that most of the changes to R.C. 5715.19 apply only to original complaints and counter-complaints filed for tax years 2022 and thereafter, but it reasoned that the lack of any mention of R.C. 5717.01 in Section 3 "demonstrates the intent for the changes [to R.C. 5717.01] to be operational on the effective date of the legislation." *Id.* at *7.

{¶ 19} The BTA rejected the board of education's argument that applying the amended version of R.C. 5717.01 to appeals from BOR decisions rendered on complaints that had been filed prior to July 21, 2022 would constitute an improper, retroactive application of the amended statute. It explained that the right to appeal to the BTA is independent of the right to file a complaint for determination by the BOR and that a right to appeal is not fixed "merely because the underlying cause of action was validly filed." *Id.* at *8. It held that extinguishment of the statutory right to appeal as of the effective date of H.B. 126 did not constitute a retroactive application as to appeals filed thereafter, even if the underlying complaint had been filed prior to the effective date of H.B. 126. *Id.* The amended statute would be applied retroactively, it posited, only if it were applied to extinguish *appeals* that were pending on the effective date of the amendments. *Id.*

{¶ 20} Finally, the BTA rejected the argument that the General Assembly's incorporation into the relevant statues the terms "original complaint" and "counter-complaint," coupled with the statement in Section 3(A) of H.B. 126 that the amendments to R.C. 5715.19, other than the enactment of R.C. 5715.19(I), apply to "any original complaint or counter-complaint, as those terms are defined in that section, filed for tax year 2022 or any tax year thereafter," impacted the board of education's appellate rights. The BTA reasoned that "original complaint" and "counter-complaint" were "common terms" that were "well established within the legal framework of ad valorem real property taxation," *id.* at *10, and that the Supreme Court, the courts of appeals, and the BTA itself had routinely used those terms prior to the enactment of H.B. 126, *id.* at *11. It stated, "it

would be wrong to conclude that they have no legal meaning until an appeal emanates from a complaint filed for tax year 2022 or later." *Id.*

{¶ 21} Having concluded that the amended version of R.C. 5717.01 took effect on July 21, 2022 and applied prospectively in *North Ridgeville*, which appeal had been filed after that effective date, the BTA dismissed the appeal for lack of jurisdiction because the exception in amended R.C. 5717.01 precluded the board of education's appeal with respect to the valuation of property it did not own or lease. *Id.* at *13.

{¶ 22} The assignments of error in these appeals stem from the premise that the BTA's decision in *North Ridgeville*, upon which the BTA relied here, constituted an erroneous interpretation and application of amended R.C. 5715.19 and 5717.01.

D. The amendments to R.C. 5717.01 took effect on July 21, 2022

{¶ 23} Before turning to the dispositive assignments of error, we first agree with the BTA that H.B. 126, including its changes to R.C. 5717.01, took effect on July 21, 2022. If no referendum petition is filed within 90 days after legislation that is subject to referendum is filed by the governor with the secretary of state, the law becomes effective immediately upon expiration of that 90-day period by operation of law. *State ex rel. Ohio Gen. Assembly v. Brunner*, 115 Ohio St.3d 103, 2007-Ohio-4460, ¶ 9, citing Article II, Section 1c, Ohio Constitution. Here, that date was July 21, 2022.

{¶ 24} Because we conclude, as addressed more fully below, that the newly added exception in R.C. 5717.01 applies only to appeals from decisions on "original complaints" or "counter-complaints" filed after the effective date of H.B. 126 and does not preclude these appellants' appeals, we need not consider whether application of the exception to appeals from complaints filed under the pre-H.B. 126 version of R.C. 5715.19 would constitute an improper retroactive application.

E. The exception in R.C. 5717.01, as amended by H.B. 126, applies only to appeals from board of revision decisions on original complaints or counter-complaints filed under amended R.C. 5715.19

{¶ 25} Because they are dispositive, we turn to the appellants' eighth and ninth assignments of error, in which they argue that the exception in amended R.C. 5717.01 does not apply to these appeals because appellants are not subdivisions who filed an "original complaint" or "counter-complaint," as those terms are defined in amended R.C.

5715.19(A).[5] Appellants rephrase and consolidate their eighth and ninth assignments of error in their appellate briefs as follows:

> THE BTA COMMITTED LEGAL ERROR IN HOLDING THAT THE REVISIONS TO R.C. 5717.01 DID NOT INCORPORATE THE NEW DEFINITIONS FROM R.C. 5715.19 WHEN THE GENERAL ASSEMBLY CLEARLY INTENDED SUCH INCORPORATION.

See, e.g., case No. 22AP-732, Appellant's Brief at 25.

{¶ 26} Our paramount concern in construing a statute is legislative intent. *State ex rel. Dispatch Printing Co. v. Johnson*, 106 Ohio St.3d 160, 2005-Ohio-4384, ¶ 21, citing *State ex rel. Steele v. Morrissey*, 103 Ohio St.3d 355, 2004-Ohio-4960, ¶ 21. To discern legislative intent, we first consider the statutory language, reading the words and phrases in context, according to rules of grammar and common usage. R.C. 1.42; *State ex rel. Choices for South-Western City Schools v. Anthony*, 108 Ohio St.3d 1, 2005-Ohio-5362, ¶ 40. We may not delete or insert words but must give effect to the words the General Assembly has chosen. *Bailey v. Republic Engineered Steels, Inc.*, 91 Ohio St.3d 38, 39-40 (2001). When a statute is unambiguous, we must apply it as written. *See id.* at 40.

{¶ 27} When statutes explicitly refer to each other, they are to be read in pari materia. *Faieta v. World Harvest Church*, 10th Dist. No. 08AP-527, 2008-Ohio-6959, ¶ 89, citing *Brooks v. Ohio State Univ.*, 111 Ohio App.3d 342, 349 (10th Dist.1996); *Ohio Bus Sales, Inc. v. Toledo Bd. of Edn.,* 82 Ohio App.3d 1, 7 (6th Dist.1992), citing *Beach v. Beach*, 99 Ohio App. 428, 434 (2d Dist.1955). "It is the duty of this court to construe statutes which explicitly refer to each other so that they are consistent and harmonious with a common policy and give effect to the legislative intent." *Brooks* at 349, citing *Suez Co. v.*

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[5] After oral argument in these cases, the Third District Court of Appeals issued an opinion in *Marysville Exempted Village Schools Bd. of Edn. v. Union Cty. Bd. of Revision*, 3d Dist. No. 14-23-03, 2023-Ohio-2020, which presented the same issues—and, indeed, the same 11 assignments of error—as this case. The Third District reversed the BTA's decision, which like the decisions in these appeals was based solely on *North Ridgeville*, but the Third District decided the appeal based on the first four assignments of error, whereas we focus on assignments of error eight and nine. It concluded that the BTA erroneously overlooked that the exception in amended R.C. 5717.01 is phrased in the present tense and is tied to the filing of a complaint or counter-complaint, not the filing of an appeal. *Id.* at ¶ 29-31. It stated, "given the use of the present tense in the statute and absent any express evidence of intended retroactivity and/or applicability to previously pending complaints, we find that the use of the language 'a subdivision *that files an original complaint or counter-complaint*' signifies a legislative intent that the amended statute be applied prospectively to appeals stemming from *complaints* filed after the July 21, 2022 effective date of the new statute, as opposed to prohibiting appeals from [decisions on] complaints that were filed prior to that date." (Emphasis sic.) *Id.* at ¶ 36.

Young, 118 Ohio App. 415 (6th Dist.1963). The fact that the General Assembly simultaneously amended both R.C. 5715.19 and 5717.01 in H.B. 126 provides additional support for reading the statutes together. *See Harris v. Ohio Dept. of Adm. Servs.*, 63 Ohio App.3d 115, 118 (10th Dist.1989) ("Since both statutes were amended at the same time by the same Act and both were amended to prohibit age discrimination and to provide a remedy * * *, and in light of the express cross-reference in each to the other statute, the two statutes should be read *in pari materia*." (Emphasis sic)). In any event, R.C. 5715.19 and 5717.01 are inextricably connected.

{¶ 28} As amended by H.B. 126, effective July 21, 2022, R.C. 5717.01 defines who may appeal a BOR's decision to the BTA with a general rule, subject to an exception. The general rule is retained in whole from the prior version of R.C. 5717.01. It states, "an appeal may be taken by * * * any board [or] legislative authority * * * authorized by [R.C. 5715.19] to file complaints against valuations or assessments." Appellants here are "board[s]" or "legislative authorit[ies]" who were authorized by R.C. 5715.19 to file complaints against valuations or assessments. The prior version of R.C. 5715.19(A)(1) authorized a "board of education of any school district with any territory in the county" to file a complaint against valuations or assessments. The amended version of R.C. 5715.19(A)(1) authorizes a "legislative authority of a subdivision" to file complaints against valuations or assessments, subject to certain prerequisites set out in R.C. 5715.19(A)(6) and (B). The amended statute defines "legislative authority" to include "the board of education of any school district with territory in the county." Therefore, under the general rule in R.C. 5717.01, the appellants boards of education would be entitled to appeal the BOR's decisions. We must therefore consider whether the exception added to R.C. 5717.01 by H.B. 126 strips them of that authority.

{¶ 29} Amended R.C. 5717.01 restricts the universe of potential appellants authorized by the general rule, stating, "except a subdivision that files an original complaint or counter-complaint under [R.C. 5715.19] with respect to property the subdivision does not own or lease may not appeal the decision of the board of revision with respect to that original complaint or counter-complaint." Unlike the general rule in amended R.C. 5717.01, which retains from the prior version of the statute the subject "any board [or] legislative authority * * * authorized by [R.C. 5715.19] to file complaints against valuations or assessments," the exception refers to "a *subdivision* that files an *original complaint* or

counter-complaint under" R.C. 5715.19 and to a BOR's "decision * * * with respect to that *original complaint* or *counter-complaint*." (Emphasis added.) *Id.* The terms "original complaint" and "counter-complaint"—each of which appears twice in the exception—were not present in former R.C. 5715.19(A) or (B), were not present in former R.C. 5717.01, and do not appear in the general rule set out in amended R.C. 5717.01.

{¶ 30} It was only with the passage of H.B. 126 that the General Assembly added the terms "original complaint" and "counter-complaint" to R.C. 5715.19(A) and (B) and 5717.01 and defined those terms in R.C. 5715.19. Appellants contend that, because they filed their complaints in these cases while the former version of R.C. 5715.19 remained in effect, they are not "subdivision[s] that file[d] an original complaint or counter-complaint" and are therefore not subject to the exception added to R.C. 5717.01 by H.B. 126. R.C. 5717.01. Appellants instead maintain that they were "board[s] of education of any school district with territory in the county" who filed "complaint[s]" under former R.C. 5715.19(A) or "complaint[s] in support of or objecting to" another party's complaint under former R.C. 5715.19(B). (*See* New Albany Appellant's Brief at 29.) We agree.

{¶ 31} Appellees acknowledge that the terms "original complaint" and "counter-complaint" did not appear in the former version of R.C. 5715.19, but they argue that, prior to the enactment of H.B. 126 and the incorporation of those terms into R.C. 5715.19 and 5717.01, courts had used those terms, which had acquired a settled meaning, to distinguish between complaints filed under R.C. 5715.19(A) and (B). *See, e.g., Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶ 9. Appellees' arguments parallel the BTA's analysis in *North Ridgeville*, where the BTA likewise downplayed the import of the General Assembly's incorporation of the terms "original complaint" and "counter-complaint" into R.C. 5715.19 and 5717.01. *See North Ridgeville* at *12-13 ("we find no reason to extend the right of a subdivision to appeal after the General Assembly revoked that right merely because it also codified a meaning for well-understood terms in the same legislation"). Appellees essentially contend that the General Assembly's inclusion of those terms in the text of amended R.C. 5715.19 and 5717.01 has no effect on their appellate rights but instead simply codified the existing understanding and common usage of those terms.

{¶ 32} Even though the terms "original complaint" and "counter-complaint" may have been used in common parlance to distinguish between the types of challenges brought

under former R.C. 5715.19(A) and (B), we may not overlook the General Assembly's intentional effort to incorporate those terms into the statutes and to define them for the first time in H.B. 126. " 'When an existing statute is repealed and a new statute upon the same subject is enacted to include an amendment, as in this case, it is presumed that the Legislature intended to change the effect and operation of the law to the extent of the change in the language thereof.' " *Greenville Law Library Assn. v. Ansonia*, 33 Ohio St.2d 3, 6 (1973), quoting *Malone v. Indus. Comm.*, 140 Ohio St. 292, 299 (1942). Accordingly, when the legislature uses different language within a statute, "we must assume it intended different results from the different words employed." *Huntington Natl. Bank v. 199 S. Fifth St. Co., LLC*, 10th Dist. No. 10AP-1082, 2011-Ohio-3707, ¶ 18.

{¶ 33} Undermining the argument that the General Assembly was simply bringing the statutory scheme into alignment with general usage of the terms "original complaint" and "counter-complaint" is the General Assembly's failure to consistently use those new terms in place of the more general "complaints against valuations or assessments" throughout amended R.C. 5715.19 and 5717.01. Most notably, as stated above, the General Assembly did not incorporate those new terms into the general rule regarding appellate rights in R.C. 5717.01. Not only must we give effect to the General Assembly's use of the new terms in the exception, but we must also give effect to the legislature's choice *not to* incorporate those new terms into the general rule. Had the General Assembly's intent been simply to codify the allegedly common understanding of those terms, it could have consistently substituted those terms in all related provisions that referred to complaints against valuations or assessments under R.C. 5715.19, but it did not. Particularly, it could have amended the general rule to authorize the filing of an appeal to the BTA by any subdivision authorized by R.C. 5715.19 to file an "original complaint" or "counter-complaint," before excepting out subdivisions that do not own or lease the subject property.

{¶ 34} The General Assembly's use of different words within the interconnected clauses of R.C. 5717.01 signals that it intended the words to have different meanings. *See Obetz v. McClain*, 164 Ohio St.3d 529, 2021-Ohio-1706, ¶ 21. Indeed, having not altered the general rule that "any board [or] legislative authority * * * authorized by [R.C. 5715.19] to file complaints against valuations or assessments" may appeal to the BTA, there was no reason for the General Assembly to introduce the new terms "original complaint" and "counter-complaint" into R.C. 5717.01 at all, unless it intended them to have some import.

It could have instead simply continued, "except that a subdivision that files *a complaint* under [R.C. 5715.19] with respect to property the subdivision does not own or lease may not appeal the decision of the board of revision with respect to *that complaint*." Although that is essentially how the BTA has read amended R.C. 5717.01, that is not what the plain language of the amended statute, with its use of different terms in the general rule and the exception, says.

{¶ 35} "It is a basic tenet of statutory construction that 'the General Assembly is not presumed to do a vain or useless thing, and that when language is inserted in a statute it is inserted to accomplish some definite purpose.' " *State v. Wilson*, 77 Ohio St.3d 334, 336 (1997), quoting *State ex rel. Cleveland Elec. Illum. Co. v. Euclid*, 169 Ohio St. 476, 479 (1959). We therefore may not treat the General Assembly's incorporation of the terms "original complaint" and "counter-complaint" into R.C. 5715.19 and 5717.01 as meaningless. By the General Assembly's incorporation and definition of the new terms "original complaint" and "counter-complaint" into R.C. 5715.19 and its simultaneous enactment in R.C. 5717.01 of an exception that defines its application by reference to those new terms, we must conclude that R.C. 5717.01's references to an "original complaint or counter-complaint under" R.C. 5715.19 necessarily refer to a complaint filed under amended R.C. 5715.19(A) or (B). Thus, reading amended R.C. 5715.19 and 5717.01 in pari materia, the exception in R.C. 5717.01 that restricts a subdivision's right to appeal a BOR decision to the BTA applies only to appeals from a BOR's decision on an "original complaint" or "counter-complaint" filed after the effective date of H.B. 126.[6] To infer otherwise, this court would have to delete (or at least ignore) the General Assembly's express use of the newly added and defined terms "original complaint" and "counter-complaint" in R.C. 5717.01. We may not do so. *See State v. White*, 103 Ohio St.3d 580, 2004-Ohio-5989, ¶ 14.

[6] Beyond our determination that the newly added and defined terms "original complaint" and "counter-complaint" refer to complaints filed pursuant to R.C. 5715.19(A) and (B) after the effective date of H.B. 126, we likewise conclude that, pursuant to Section 3(A) of H.B. 126, a BOR decision on a complaint filed prior to the effective date of H.B. 126 is not a decision on an "original complaint or counter-complaint, as those terms are defined in [amended R.C. 5715.19], filed for tax year 2022 or any tax year thereafter." The BOR's decisions on the complaints underlying these appeals, which challenged valuations for tax year 2021 and were filed before the effective date of H.B. 126, were therefore not decisions "with respect to [a subdivision's] original complaint or counter-complaint" because the relevant amendments to R.C. 5715.19 apply only to challenges for tax year 2022 and thereafter.

V. CONCLUSION

{¶ 36} The appellants boards of education in these appeals are not "subdivision[s] that file[d] an original complaint or counter-complaint under" R.C. 5715.19, as the complaints that gave rise to these appeals were filed prior to the effective date of H.B. 126, under the former version of R.C. 5715.19, which did not include the terms "original complaint" or "counter-complaint." As used in the exception added to R.C. 5717.01 by H.B. 126, "an original complaint or counter-complaint under [R.C. 5715.19]" refers to a complaint filed under amended R.C. 5715.19. Therefore, the exception does not preclude the boards of education from maintaining their appeals to the BTA. Instead, as "board[s] * * * authorized by [R.C. 5715.19] to file complaints against valuation or assessments," R.C. 5717.01, appellants were entitled to appeal the BOR's decisions under the general rule in R.C. 5717.01.

{¶ 37} For these reasons, we sustain the boards of education's eighth and ninth assignments of error and deny their remaining assignments of error as moot. We accordingly reverse the decisions of the BTA and remand these appeals to the BTA for further proceedings consistent with this decision and the law.

Decisions reversed; causes remanded.

MENTEL and LELAND, JJ., concur.

OHIO BOARD OF TAX APPEALS

WORTHINGTON CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2022-1431, 2022-1714 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Tuesday, December 6, 2022

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is before the Board on a motion to dismiss for lack of jurisdiction. The Board of Tax Appeals is a creature of statute, and has only the jurisdiction, power, and duties expressly given by the General Assembly. *Steward v. Evatt*, 143 Ohio St. 547, 56 N.E.2d 159 (1944). The Ohio Supreme Court has recognized the "longstanding doctrine" that "[s]tatutory standing is a jurisdictional prerequisite in administrative appeals." *Diley Ridge Med. Ctr. v. Fairfield Cty. Bd. of*

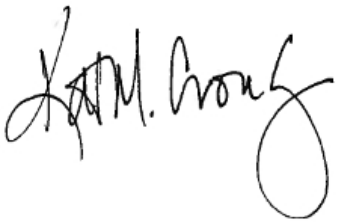
Revision, 141 Ohio St.3d 149, 2014-Ohio-5030, 22 N.E.3d 1072, ¶ 11. In short, this Board can consider an appeal only when an appellant clearly demonstrates the statutory authority for this Board to do so.

Here, the Board of Education purports to appeal through R.C. 5717.01. However, that statute permits boards of education to appeal a decision of a county board of revision to this Board only if the board of education owns or leases the property at issue in the original complaint. *N. Ridgeville City Schools Bd. of Edn. v. Lorain Cty. Bd. of Revision*, BTA No. 2022-1152 (Oct. 31, 2022). However, it is undisputed that the BOE does not own or lease the property. Accordingly, based on the existing record, we find we lack jurisdiction over this appeal and dismiss it.

We also note the property owner has filed a motion to reconsider on consolidation. Because we lack jurisdiction over both cases, we deny the motion as moot.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Harbarger		
Ms. Clements		
Mr. Caswell		

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



Kathleen M. Crowley, Board Secretary