

No. 13-20-00551-CV

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KATHY S. MILLS  
Clerk

**In the Court of Appeals  
For the Thirteenth Court of Texas**

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**HARRIS COUNTY APPRAISAL REVIEW BOARD**

Defendant-Appellant

v.

**NAV PROPERTIES, LLC**

Plaintiff-Appellee

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On Appeal from the 269th District Court of Harris County, Texas  
Trial Court Cause No. 2019-79598

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**APPELLANT HARRIS COUNTY APPRAISAL REVIEW BOARD'S  
INITIAL BRIEF**

---

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**ORAL ARGUMENT REQUESTED**

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## **STATEMENT REGARDING ORAL ARGUMENT**

This case presents an important issue of law affecting the interpretation of an administrative property tax process throughout the 254 counties in Texas. Because of the nature and impact of this case, Appellant believes oral argument would aid the justices in their decisional process.

## **RECORD AND PARTY REFERENCES AND CITATIONS**

Appellant's brief uses the following references, with specific page numbers in brackets, unless otherwise noted.

### **Record References**

The Clerk's record consists of one volume and supplement, referenced as follows:

Clerk's Record, filed December 16, 2020

C.R. [page]



## STATEMENT OF THE CASE

*Nature of the Case:* Plaintiff, NAV Properties, LLC., protested its 2019 property taxes. In accordance with Texas Tax Code § 41.45(a), the Harris County Appraisal Review Board scheduled a hearing. However, NAV Properties did not show up or request another hearing for good cause within four days, as required by Texas Tax Code § 41.45 (e-1) and (e-2). A property owner's failure to appear (or present affidavit evidence) at a scheduled Appraisal Review Board hearing deprives the district court of subject matter jurisdiction over claims against the Appraisal Review Board. Plaintiff's sole remedy was a trial *de novo* on the merits of its protest against the Harris County Appraisal District. (However, Plaintiff failed to file suit within 60 days, as required by Texas Tax Code § 42.21(a)).

*Course of Proceedings:* On October 31, 2019, Plaintiff filed suit against the Harris County Appraisal District and Harris County Appraisal Review Board. On November 4, 2020, the Harris County Appraisal Board filed a plea to the jurisdiction and motion to dismiss. On November 12, 2020, Plaintiff responded. On November 24, 2020, the Harris County Appraisal District filed a plea to the jurisdiction. On November 18, 2020, the trial court denied the Harris County Appraisal Review Board's plea to the jurisdiction. On December 4, 2020, the Harris County Appraisal Review Board filed a notice of appeal.

*Trial Court:* The Honorable Cory Sepolio, 269th District Court, Harris County, Texas, Cause No. 2019-79583.

*Trial Court's Disposition:* On November 18, 2020, the trial court denied the Harris County Appraisal Review Board's Plea to the jurisdiction without providing written reasons.

## **STATEMENT OF JURISDICTION**

This Honorable Court has jurisdiction over this interlocutory appeal under  
Tex. Civ. Prac. & Rem. Code § 51.014(a)(8).

## STATEMENT OF ISSUES PRESENTED

### Issue 1:

Did the lower court err in denying the Harris County Appraisal Review Board's plea to the jurisdiction when the Board retained sovereign immunity because it met its statutory duty to schedule a hearing on Plaintiff's property tax protest, but Plaintiff failed to show up for the hearing, failed to request a rehearing within four days as provided by statute, and even missed the 60 day statute of limitations to seek a trial *de novo* on the underlying tax protest?

## **TO THE HONORABLE JUSTICES:**

Appellant Harris County Appraisal Review Board submits this Initial Brief and respectfully represents as follows:

### **INTRODUCTION**

Under Texas law, the Harris County Appraisal District is responsible for determining the appraised value of taxable property within the county. When a property owner disagrees with the Appraisal District's property valuation, he must follow a specific regulatory process codified in the Texas Tax Code.

Under this process, the Appraisal Review Board serves as an informal administrative court that reviews the Appraisal District's valuation. As a tribunal, the Appraisal Review Board can only be sued in one narrow instance—to compel it to schedule a hearing for a property owner “who has been denied a hearing to which the property owner is entitled...” Texas Tax Code § 41.45(f). Otherwise, a dissatisfied property owner has only one option—to sue the Appraisal District for a *de novo* trial on the merits of his protest within 60 days of the Appraisal Review Board's decision. Texas Tax Code § 42.21(a).

In this case, Plaintiff-Appellee NAV Properties, LLC. protested the 2019 property taxes for Harris County Appraisal District Account No. 037200010042. The Harris County Appraisal Review Board dutifully scheduled an administrative hearing, but NAV Properties failed to show up. NAV Properties also failed to show

good cause (within four days) for missing the hearing, as provided by Texas Tax Code § 41.45 (e-1) & (e-2).

After waiving the opportunity for a hearing before the Harris County Appraisal Review Board, NAV Properties filed suit against both the Harris County Appraisal Review Board and Harris County Appraisal District to demand another opportunity for an administrative hearing and a *de novo* trial. This is expressly forbidden by Texas Tax Code § 42.21(b), which prohibits NAV Properties from bringing any petition for review against the Appraisal Review Board. *See also, e.g., Fort Bend Central Appraisal Dist. v. McGee Chapel Baptist Church*, 611 S.W.3d 443 (Tex. App.—Houston [14th Dist.] Oct. 15, 2020).

The Appraisal Review Board filed a plea to the jurisdiction, which the district court denied. The district court lacks subject matter jurisdiction over Plaintiff's claim against the Appraisal Review Board, and the Appraisal Review Board respectfully requests that the case against it be dismissed.<sup>1</sup>

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<sup>1</sup> As discussed, *infra*, the trial court also lacked subject matter jurisdiction over NAV Properties' suit against the Appraisal Review Board because NAV Properties waited 67 days to file suit—seven days after the 60-day statute of limitations expired.

## STATEMENT OF THE FACTS

Plaintiff-Appellee NAV Properties protested the 2019 property tax valuation of 0 Commerce Street, Houston, Texas. In accordance with Texas Tax Code § 41.45(a), the Harris County Appraisal Review Board scheduled a hearing on the protest for July 12, 2019 at 3:25 p.m. and sent notice to NAV Properties. (C.R. 32). NAV Properties had the opportunity to appear and “offer evidence or argument” in person, by telephone, or by affidavit. Texas Tax Code § 41.45(b) & (b-1).

NAV Properties failed to show up or submit any response. On July 29, 2019, the Harris County Appraisal Review Board notified NAV Properties that because of this failure to participate in the hearing, its protest was dismissed (C.R. 34-35). NAV Properties failed to file “a written statement with the appraisal review board showing good cause for the failure to appear and requesting a new hearing” within the four days provided by Texas Tax Code § 41.45(e-1) & (e-2). Sixty-seven days later, NAV Properties filed a lawsuit against both the Appraisal District and Appraisal Board seeking a trial *de novo* and an order compelling the Appraisal Board to schedule a second hearing.

On November 4, 2020, the Harris County Appraisal Review Board filed a plea to the jurisdiction arguing the district court lacked subject matter jurisdiction over it because:

- (1) The Appraisal Board fulfilled its sole obligation under Texas Tax Code § 41.45(a) by scheduling a hearing, and Texas law does not allow any further cause of action against it;
- (2) Once the Appraisal Board scheduled a hearing, NAV Properties' sole remedy was a trial *de novo* against the Appraisal District—not the Appraisal Board; and
- (3) NAV Properties missed its 60 day deadline to file suit against the Appraisal District.<sup>2</sup>

The Appraisal Review Board further pointed out that once it scheduled a hearing, it was immune from any claim related to Plaintiff's tax protest. (C.R. 23-26). The district court denied the plea to the jurisdiction without reason. (C.R. 64).

### **SUMMARY OF THE ARGUMENT**

Sovereign immunity is one of the most important doctrines in Texas law. A plaintiff has the burden of establishing that sovereign immunity has been waived, and a court may rule on sovereign immunity based on pleadings alone, or even when the defense is raised for the first time on appeal, so long as the other party has a "fair opportunity to address jurisdictional issues by amending its pleadings or developing the record when the jurisdictional issues were not raised in the trial court." *Rusk State Hosp. v. Black*, 392 S.W.3d 88, 96 (Tex. 2012).

Plaintiff NAV Properties has not met its burden. The Legislature has only waived immunity against the Harris County Appraisal Review Board under narrow circumstances when it refuses to schedule a taxpayer protest hearing to which the

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<sup>2</sup> C.R. 23-27.

taxpayer is entitled. In this case, the Board scheduled the hearing, but NAV Properties did not show up. It never provided good cause for its failure to attend and never requested another hearing within four days, as provided by statute. Accordingly, the Harris County Appraisal Review Board's plea to the jurisdiction should have been granted, and the district court erred in denying it.

After the Appraisal Review Board scheduled a hearing, NAV Properties' only remedy for any complaints about its 2019 taxes was to file suit against the Appraisal District within 60 days and seek a trial *de novo* on the merits of its tax protest. NAV Properties failed to meet this deadline, and the Harris County Appraisal District's plea to the jurisdiction should also have been granted.

## **ARGUMENT**

### **I. Standard of Review**

A trial court may not allow litigation to proceed without first determining that it has subject matter jurisdiction. *Texas Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex.2004). A trial court has no subject matter jurisdiction over claims against governmental units unless the Legislature clearly and unequivocally waived sovereign immunity.

A governmental unit may challenge a trial court's jurisdiction through a plea to the jurisdiction or motion for summary judgment, and if denied, the government may file an accelerated interlocutory appeal under Tex. Civ. Prac. & Rem. Code §



51.014(a)(8) and § 51.014(f). Subject matter jurisdiction is a question of law reviewed *de novo*. *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 911, 928 (Tex.1998); *Harris County v. Estate of Ciccia*, 125 S.W.3d 749, 752 (Tex. App.—Houston [1st Dist.] Dec. 23, 2003, pet. denied).

**II. The lower court err in denying the Harris County Appraisal Review Board’s plea to the jurisdiction because the Texas Legislature has not waived the Board’s sovereign immunity.**

**A. The Harris County Appraisal Review Board is presumed to be immune from suit.**

The district court lacked subject matter jurisdiction because the Appraisal Review Board has sovereign immunity. The concept of sovereign immunity began with the English monarchy (“the king cannot be sued”) and was adopted in the United States. Alexander Hamilton noted in the Federalist Papers:

It is inherent in the nature of sovereignty not to be amenable to suit of an individual without its consent. This is the general scheme and the general practice of mankind; and the exception, of one of the attributes of sovereignty, is now enjoyed by the government of every State in the Union.

Federalist No. 81, at 487. Texas first recognized in 1847 that “[a] state cannot be sued in her own courts without her own consent, and then only in the manner indicated by that consent.” *Rufus K. Hosner v. John Deyoung, Surveyor, etc.*, 1 Tex. 764 (1847).

In recent years, the Supreme Court and Legislature reaffirmed the high burden a party asserting a waiver of immunity bears. In 2001, the Legislature

codified Tex. Gov't Code § 311.034, which requires “clear and unambiguous language” to waive immunity:

In order to preserve the legislature’s interest in managing state fiscal matters through the appropriations process, a statute shall not be construed as a waiver of sovereign immunity unless the waiver is effected by clear and unambiguous language . . . Statutory prerequisites to a suit, including the provision of notice, are jurisdictional requirements in all suits against a government entity.

In applying § 311.034, the Texas Supreme Court does not permit damages against a government entity unless an underlying statute waives immunity “beyond doubt.” It has further held “we generally resolve ambiguities by retaining immunity.” *Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 697 (Tex. 2003)(emphasis added).

**B. The district court had no jurisdiction over Plaintiff’s claims against the Appraisal Review Board.**

The Appraisal Review Board retains all sovereign immunity except for one narrow waiver under Texas Tax Code § 41.45(f). Section (f) permits NAV Properties to compel the Appraisal Review Board to provide a hearing to which the property owner is “entitled.”

Sections (a) and (e-1) specify the only circumstances in which a property owner is “entitled” to a hearing. Section (a) requires the Appraisal Review Board to initially “schedule a hearing on the protest” (emphasis added) and Section (e-1) requires the Appraisal Review Board to reschedule the hearing only if the property

owner missed it for “good cause” and makes the request to reschedule within four days.

It is undisputed that: (1) the Appraisal Review Board scheduled a hearing on NAV Properties’ tax dispute for July 12, 2019 at 3:25 p.m. (C.R. 32), (2) NAV Properties failed to submit affidavits or show up for that hearing (C.R. 33-35), and (3) NAV Properties failed to provide good cause within four days to reschedule the hearing.<sup>3</sup> Accordingly, the Appraisal Review Board met its statutory obligations, and NAV Properties was not “entitled” to any additional hearings. Thus, NAV Properties has no cause of action against the Appraisal Review Board, and the district court lacked subject matter jurisdiction over this case.

Even assuming, *arguendo*, NAV Properties had not received notice, the district court would still have lacked subject matter jurisdiction over the Appraisal Review Board. The Legislature provides no cause of action against the Appraisal Review Board for unfairness, incompetence, inefficiency, erroneousness, or incompleteness of administrative decisions or procedures. Those matters can only be resolved by a trial *de novo* on the merits of the protest against the Appraisal District. This is codified in Texas Tax Code § 42.21(b), which specifies that a taxpayer’s petition for review to the district court:

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<sup>3</sup> NAV Properties submitted a form six days after the hearing admitting that its agent was aware of the hearing and intended to appear, but for some unknown reason, did not show up. (C.R. 33) (hearing date July 12—form stamped as received July 18).

... must be brought against the appraisal district. **A petition for review may not be brought against the appraisal review board.** An appraisal district may hire an attorney that represents the district to represent the appraisal review board established for the district to file an answer and obtain a dismissal of a suit filed against the appraisal review board in violation of this subsection.<sup>4</sup>

In *Fort Bend Central Appraisal Dist. v. McGee Chapel Baptist Church*, 611 S.W.3d 443 (Tex. App.—Houston [14th Dist.] Oct. 15, 2020), the Fourteenth Court of Appeals considered a case where a church protested a tax assessment. The Appraisal Review Board scheduled a hearing, but dismissed the protest when the church failed to show up. The church claimed it never received notice and filed suit against the Appraisal District and Appraisal Review Board.<sup>5</sup>

The appellate court held that a trial court only has subject matter jurisdiction over an Appraisal Review Board when it refuses to schedule a hearing at all:

... it is undisputed that the ARB [Appraisal Review Board] scheduled the required hearing on both of McGee Chapel's protests. McGee Chapel did not attend the first hearing because, it claimed, the ARB failed to provide notice. Had the ARB refused to schedule a hearing on either of McGee Chapel's protests, McGee Chapel could have petitioned the trial court to compel the ARB to conduct a hearing under section 41.45(f).

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<sup>4</sup> (emphasis added). A district court may remand a case back to the Appraisal Review Board, but it treats the Appraisal Review Board as a lower tribunal—not a party to the case. *See* Texas Tax Code § 42.231. In this case, the district court did not remand the case—it allowed Plaintiff to proceed against the Appraisal Review Board as if it were a party to the suit.

<sup>5</sup> The case against the Appraisal Review Board was voluntarily dismissed, and the Appraisal District litigated the property owner's claim that the Appraisal Review Board improperly dismissed the protest after failing to provide notice.

*Fort Bend Cent. Appraisal Dist. v. McGee Chapel Baptist Church*, 611 S.W.3d 443, 449 (Tex. App. 2020). The court further recognized that any claim about lack of notice or other irregularities in the Appraisal Review Board procedure may only be litigated against the Appraisal District. *Id.*

In the *Spencer Square* case, a taxpayer protested his taxes and attended an Appraisal Review Board hearing, but alleged the hearing was improperly convened in violation of the Tax Code. He filed suit against the Appraisal Review Board and requested a second hearing. The Appraisal Review Board filed a plea to the jurisdiction, which the district court denied.

The Fourteenth Court of Appeals reversed and explained that the district court's only jurisdiction against an Appraisal Review Board is through Texas Tax Code § 41.45(f), which does not permit a cause of action once the Appraisal Review Board schedules a hearing. As the Fourteenth Court of Appeals explains, any allegation of irregularity related to the hearing must be adjudicated through a *de novo* trial against the Appraisal District—not the Appraisal Review Board:

We decline to read section 41.45(f) as providing an additional avenue to attack an appraisal review board's order. Following its protest hearing, Spencer Square had the opportunity to appeal the Board's order to the district court for trial *de novo* to remedy any errors committed by the Board. Apparently, Spencer Square chose not to avail itself of its appellate options. Having forgone such an appeal, Spencer Square missed its opportunity to contest the Board's order. Section 41.45(f) grants the district courts authority to compel appraisal review boards to conduct a protest hearing if the appraisal review board denied the property owner a hearing to which he was

entitled. Section 41.45(f) does not grant the district courts authority to compel appraisal review boards to conduct additional protest hearings. Spencer Square may not now utilize section 41.45(f) to circumvent the appellate process mandated by the Tax Code. Therefore, the district court has no subject matter jurisdiction to order a second appraisal review board hearing.

*Appraisal Review Bd. of Harris Cty. Appraisal Dist. v. Spencer Square Ltd*, 252 S.W.3d 842, 845 (Tex. App.—Houston [14th Dist.] 2008).

The Fourteenth Court of Appeals similarly reversed the denial of the Harris County Appraisal Review Board's plea to the jurisdiction in the *Betz* case. In that case, a taxpayer also complained about alleged irregularities in the procedures used by the Appraisal Review Board. The Court of Appeals again noted that once a hearing is scheduled, a taxpayer's sole remedy is a trial *de novo* against the Appraisal District:

We held that the trial court erred by denying the Board's plea to the jurisdiction. *See id.* at 844-46. We stated that section 41.45(f) grants district courts jurisdiction to compel an appraisal review board to conduct a hearing if it denied a hearing after the property owner filed a notice of protest complying with the Tax Code. *See id.* at 845. We also recognized that a petition for judicial review pursuant to Chapter 42 is the process prescribed in the Tax Code for an owner to appeal an appraisal board's order and complain of procedural errors committed by the board. *See id.* (citing Tex. Tax Code Ann. §§ 42.01, 42.21, 42.23, 42.28 (Vernon 2008)). The owner did not timely file a petition for judicial review. *See id.* at 843, 845. We concluded that section 41.45(f) did not provide an additional avenue for attacking the Board's order and could not be used to circumvent the appeal process prescribed by Chapter 42. *See id.* at 845. Accordingly, we held that the trial court lacked jurisdiction under section 41.45(f) to order a second board hearing. *Id.*; *see also Appraisal Review Bd. of Harris County Appraisal Dist. v. O'Connor & Associates*, 267 S.W.3d 413,

41718 (Tex.App.-Houston [14th Dist.] 2008, no pet.) (holding as follows: section 41.45(f) did not give district court jurisdiction over taxpayers' claim that appraisal board failed to conduct hearing in accordance with procedures outlined in Tax Code; taxpayer may not circumvent appeal provisions in Chapter 42 by alleging Board failed to adhere to procedural guidelines; and interpreting section 41.45(f) as creating another avenue of appeal would render provisions in Chapter 42 meaningless).

*Betz Louetta 25 Ltd. v. Appraisal Review Bd. of Harris Cty. Appraisal Dist.*, No. 14-07-00587-CV, 2009 WL 87584, at \*3 (Tex. App.—Houston [14th Dist.] Jan. 15, 2009).

**C. NAV Properties missed its 60-day deadline, which deprived the district court of subject matter jurisdiction over any claims related to the 2019 taxes.**

In this case, NAV Properties is not entitled to bring suit against anyone related to its 2019 taxes because it missed its 60-day deadline to file suit. NAV Properties was permitted to file suit against the Harris County Appraisal District for a *de novo* review of all matters that could have been raised before the Appraisal Review Board. However, under Texas Tax Code § 42.21(a), it had to do so within 60 days of receiving notice that a final order had been entered. *See also, Townsend v. Montgomery Cent. Appraisal Dist.*, No. 14-14-00103-CV, 2015 WL 971313, at \*4. (Tex. App.—Houston [14th dist.]).

NAV Properties missed this deadline. On August 12, 2019, the Appraisal Review Board notified Plaintiff that it would not schedule a second hearing because Plaintiff missed the first hearing and failed to provide good cause within

four days. Plaintiff stamped that letter “Received August 26, 2019,” which affirmatively established that NAV Properties had notice of an appealable event on that day. (C.R. 67-68 & 72). To meet the statute of limitations, NAV Properties had until October 24, 2019 to file in district court. It failed to file until October 31, 2019. (C.R. 3 & 67-68). Plaintiff’s suit is untimely under Texas Tax Code § 42.21(a) and should have been dismissed in its entirety.

### **CONCLUSION AND PRAYER**

Plaintiff NAV Properties has the burden of showing facts sufficient to demonstrate the trial court’s jurisdiction to hear this case. It has not met that burden. The Legislature waived immunity against the Harris County Appraisal Review Board only in narrow circumstances when it refuses to schedule a taxpayer protest hearing to which the taxpayer is entitled. Once the Appraisal Review Board schedules a hearing (as it did in this case), all further taxpayer claims must be resolved by a trial *de novo* against the Harris County Appraisal District. The district court’s denial of the Harris County Appraisal Review Board’s plea to the jurisdiction should be reversed, and this case should be dismissed.



Respectfully submitted,

CHRISTIAN D. MENEFEE  
HARRIS COUNTY ATTORNEY

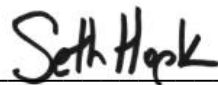


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APPRAISAL REVIEW BOARD

**CERTIFICATE OF COMPLIANCE**

The undersigned attorney certifies that this document was produced on a computer and printed in a conventional typeface no smaller than 14-point, except for footnotes, which are no smaller than 12-point. This document also complies with the word-count limitations of Tex. R. App. P. 9.4. Relying on the word count of the computer program used to prepare this document, it contains 3,434 words, excluding the portions listed in Tex. R. App. P. 9.4(i)(1).



SETH HOPKINS

**CERTIFICATE OF SERVICE**

I certify that on the 5th day of January, 2020, a true and correct copy of the foregoing instrument was served by electronic filing through the electronic filing manager, as required by Texas Rule of Appellate Procedure 9.5(b)(1), and by electronic mail, to counsel of record.

  
\_\_\_\_\_  
SETH HOPKINS

# Appendix

## Necessary Contents

### Tab 1:

Trial court's order denying the Harris County Appraisal Review Board's plea to the jurisdiction on immunity

NO. 2019-79598

NAV PROPERTIES LLC

VS.

HARRIS COUNTY APPRAISAL DISTRICT &  
THE HARRIS COUNTY APPRAISAL REVIEW  
BOARD

IN THE DISTRICT COURT OF

HARRIS COUNTY, T E X A S

269<sup>TH</sup> JUDICIAL DISTRICT

PJURY  
DISMY

ORDER DENYING DEFENDANT ARB'S PLEA TO THE JURISDICTION  
AND MOTION TO DISMISS


The court considered the Defendant ARB's Plea to the Jurisdiction and Motion to Dismiss determined that is should be denied.

It is hereby, ORDERED, ADJUDGED AND DECREED that the Defendant ARB's Plea to the Jurisdiction and Motion to Dismiss be and is hereby DENIED.

Signed the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Signed:  
11/18/2020  
2:44 PM  
  
\_\_\_\_\_  
DISTRICT JUDGE

Tab 2:  
Texas Tax Code § 42.21(b)

 KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated  
Tax Code (Refs & Annos)  
Title 1. Property Tax Code  
Subtitle F. Remedies  
Chapter 42. Judicial Review (Refs & Annos)  
Subchapter B. Review by District Court

V.T.C.A., Tax Code § 42.21

## § 42.21. Petition for Review

Effective: September 1, 2013

[Currentness](#)

(a) A party who appeals as provided by this chapter must file a petition for review with the district court within 60 days after the party received notice that a final order has been entered from which an appeal may be had or at any time after the hearing but before the 60-day deadline. Failure to timely file a petition bars any appeal under this chapter.

(b) A petition for review brought under [Section 42.02](#) must be brought against the owner of the property involved in the appeal. A petition for review brought under [Section 42.031](#) must be brought against the appraisal district and against the owner of the property involved in the appeal. A petition for review brought under [Section 42.01\(a\)\(2\)](#) or [42.03](#) must be brought against the comptroller. Any other petition for review under this chapter must be brought against the appraisal district. A petition for review may not be brought against the appraisal review board. An appraisal district may hire an attorney that represents the district to represent the appraisal review board established for the district to file an answer and obtain a dismissal of a suit filed against the appraisal review board in violation of this subsection.

(c) If an appeal under this chapter is pending when the appraisal review board issues an order in a subsequent year under a protest by the same property owner and that protest relates to the same property that is involved in the pending appeal, the property owner may appeal the subsequent appraisal review board order by amending the original petition for the pending appeal to include the grounds for appealing the subsequent order. The amended petition must be filed with the court in the period provided by Subsection (a) for filing a petition for review of the subsequent order. A property owner may appeal the subsequent appraisal review board order under this subsection or may appeal the order independently of the pending appeal as otherwise provided by this section, but may not do both. A property owner may change the election of remedies provided by this subsection at any time before the end of the period provided by Subsection (a) for filing a petition for review.

(d) An appraisal district is served by service on the chief appraiser at any time or by service on any other officer or employee of the appraisal district present at the appraisal office at a time when the appraisal office is open for business with the public. An appraisal review board is served by service on the chairman of the appraisal review board. Citation of a party is issued and served in the manner provided by law for civil suits generally.

(e) A petition that is timely filed under Subsection (a) or amended under Subsection (c) may be subsequently amended to:

(1) correct or change the name of a party; or

(2) not later than the 120th day before the date of trial, identify or describe the property originally involved in the appeal.

(f) A petition filed by an owner or lessee of property may include multiple properties that are owned or leased by the same person and are of a similar type or are part of the same economic unit and would typically sell as a single property. If a petition is filed by multiple plaintiffs or includes multiple properties that are not of a similar type, are not part of the same economic unit, or are part of the same economic unit but would not typically sell as a single property, the court may on motion and a showing of good cause sever the plaintiffs or the properties.

(g) A petition filed by an owner or lessee of property may be amended to include additional properties in the same county that are owned or leased by the same person, are of a similar type as the property originally involved in the appeal or are part of the same economic unit as the property originally involved in the appeal and would typically sell as a single property, and are the subject of an appraisal review board order issued in the same year as the order that is the subject of the original appeal. The amendment must be filed within the period during which a petition for review of the appraisal review board order pertaining to the additional properties would be required to be filed under Subsection (a).

(h) The court has jurisdiction over an appeal under this chapter brought on behalf of a property owner or lessee and the owner or lessee is considered to have exhausted the owner's or lessee's administrative remedies regardless of whether the petition correctly identifies the plaintiff as the owner or lessee of the property or correctly describes the property so long as the property was the subject of an appraisal review board order, the petition was filed within the period required by Subsection (a), and the petition provides sufficient information to identify the property that is the subject of the petition. Whether the plaintiff is the proper party to bring the petition or whether the property needs to be further identified or described must be addressed by means of a special exception and correction of the petition by amendment as authorized by Subsection (e) and may not be the subject of a plea to the jurisdiction or a claim that the plaintiff has failed to exhaust the plaintiff's administrative remedies. If the petition is amended to add a plaintiff, the court on motion shall enter a docket control order to provide proper deadlines in response to the addition of the plaintiff.

#### **Credits**

Acts 1979, 66th Leg., p. 2311, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 5344, ch. 981, § 1, eff. Aug. 29, 1983; Acts 1985, 69th Leg., ch. 760, § 1, eff. Aug. 26, 1985; [Acts 1989, 71st Leg., ch. 796, § 44, eff. June 15, 1989](#); [Acts 1991, 72nd Leg., 2nd C.S., ch. 6, § 54, eff. Sept. 1, 1991](#); [Acts 1999, 76th Leg., ch. 1113, § 1, eff. June 18, 1999](#); [Acts 2009, 81st Leg., ch. 905, § 1, eff. June 19, 2009](#); [Acts 2011, 82nd Leg., ch. 771 \(H.B. 1887\), § 15, eff. Sept. 1, 2011](#); [Acts 2013, 83rd Leg., ch. 161 \(S.B. 1093\), § 19.006, eff. Sept. 1, 2013](#); [Acts 2013, 83rd Leg., ch. 1259 \(H.B. 585\), § 25, eff. June 14, 2013](#).


#### [Notes of Decisions \(89\)](#)

V. T. C. A., Tax Code § 42.21, TX TAX § 42.21

Current through the end of the 2019 Regular Session of the 86th Legislature

Tab 3:  
Texas Tax Code § 41.45



 KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated  
Tax Code (Refs & Annos)  
Title 1. Property Tax Code  
Subtitle F. Remedies  
Chapter 41. Local Review (Refs & Annos)  
Subchapter C. Taxpayer Protest (Refs & Annos)

V.T.C.A., Tax Code § 41.45

## § 41.45. Hearing on Protest

Effective: September 1, 2020

[Currentness](#)

(a) On the filing of a notice as required by [Section 41.44](#), the appraisal review board shall schedule a hearing on the protest. If more than one protest is filed relating to the same property, the appraisal review board shall schedule a single hearing on all timely filed protests relating to the property. A hearing for a property that is owned in undivided or fractional interests, including separate interests in a mineral in place, shall be scheduled to provide for participation by all owners who have timely filed a protest.

(b) A property owner initiating a protest is entitled to appear to offer evidence or argument. A property owner may offer evidence or argument by affidavit without personally appearing and may appear by telephone conference call to offer argument. A property owner who appears by telephone conference call must offer any evidence by affidavit. A property owner must submit an affidavit described by this subsection to the board hearing the protest before the board begins the hearing on the protest. On receipt of an affidavit, the board shall notify the chief appraiser. The chief appraiser may inspect the affidavit and is entitled to a copy on request.

(b-1) An appraisal review board shall conduct a hearing on a protest by telephone conference call if:

(1) the property owner notifies the board that the property owner intends to appear by telephone conference call in the owner's notice of protest or by written notice filed with the board not later than the 10th day before the date of the hearing; or

(2) the board proposes that the hearing be conducted by telephone conference call and the property owner agrees to the hearing being conducted in that manner.

(b-2) If a property owner elects to have a hearing on a protest conducted by telephone conference call, the appraisal review board shall:

(1) provide a telephone number for the property owner to call to participate in the hearing; and

(2) hold the hearing in a location equipped with telephone equipment that allows each board member and the other parties to the protest who are present at the hearing to hear the property owner offer argument.

(b-3) A property owner is responsible for providing access to a hearing on a protest conducted by telephone conference call to another person that the owner invites to participate in the hearing.

(c) The chief appraiser shall appear at each protest hearing before the appraisal review board to represent the appraisal office.

(d) This subsection does not apply to a special panel established under [Section 6.425](#). An appraisal review board consisting of more than three members may sit in panels of not fewer than three members to conduct protest hearings. If the recommendation of a panel is not accepted by the board, the board may refer the matter for rehearing to a panel composed of members who did not hear the original protest or, if there are not at least three members who did not hear the original protest, the board may determine the protest.

(d-1) An appraisal review board to which [Section 6.425](#) applies shall sit in special panels established under that section to conduct protest hearings. A special panel may conduct a protest hearing relating to property only if the property is described by [Section 6.425\(b\)](#) and the property owner has requested that a special panel conduct the hearing or if the protest is assigned to the special panel under [Section 6.425\(f\)](#). If the recommendation of a special panel is not accepted by the board, the board may refer the matter for rehearing to another special panel composed of members who did not hear the original protest or, if there are not at least three other special panel members who did not hear the original protest, the board may determine the protest.

(d-2) The determination of a protest heard by a panel under Subsection (d) or (d-1) must be made by the board.

(d-3) The board must deliver notice of a hearing or meeting to determine a protest heard by a panel, or to rehear a protest, under Subsection (d) or (d-1) in accordance with the provisions of this subchapter.

(e) On request made to the appraisal review board before the date of the hearing, a property owner who has not designated an agent under [Section 1.111](#) to represent the owner at the hearing is entitled to one postponement of the hearing to a later date without showing cause. In addition and without limitation as to the number of postponements, the board shall postpone the hearing to a later date if the property owner or the owner's agent at any time shows good cause for the postponement or if the chief appraiser consents to the postponement. The hearing may not be postponed to a date less than five or more than 30 days after the date scheduled for the hearing when the postponement is sought unless the date and time of the hearing as postponed are agreed to by the chairman of the appraisal review board or the chairman's representative, the property owner, and the chief appraiser. A request by a property owner for a postponement under this subsection may be made in writing, including by facsimile transmission or electronic mail, by telephone, or in person to the appraisal review board, a panel of the board, or the chairman of the board. The chairman or the chairman's representative may take action on a postponement under this subsection without the necessity of action by the full board if the hearing for which the postponement is requested is scheduled to occur before the next regular meeting of the board. The granting by the appraisal review board, the chairman, or the chairman's representative of a postponement under this subsection does not require the delivery of additional written notice to the property owner.

(e-1) A property owner or a person designated by the property owner as the owner's agent to represent the owner at the hearing who fails to appear at the hearing is entitled to a new hearing if the property owner or the owner's agent files, not later than

the fourth day after the date the hearing occurred, a written statement with the appraisal review board showing good cause for the failure to appear and requesting a new hearing.

(e-2) For purposes of Subsections (e) and (e-1), “good cause” means a reason that includes an error or mistake that:

(1) was not intentional or the result of conscious indifference; and

(2) will not cause undue delay or other injury to the person authorized to extend the deadline or grant a rescheduling.

(f) A property owner who has been denied a hearing to which the property owner is entitled under this chapter may bring suit against the appraisal review board by filing a petition or application in district court to compel the board to provide the hearing. If the property owner is entitled to the hearing, the court shall order the hearing to be held and may award court costs and reasonable attorney fees to the property owner.

(g) In addition to the grounds for a postponement under Subsection (e), the board shall postpone the hearing to a later date if:

(1) the owner of the property or the owner's agent is also scheduled to appear at a hearing on a protest filed with the appraisal review board of another appraisal district;

(2) the hearing before the other appraisal review board is scheduled to occur on the same date as the hearing set by the appraisal review board from which the postponement is sought;

(3) the notice of hearing delivered to the property owner or the owner's agent by the other appraisal review board bears an earlier postmark than the notice of hearing delivered by the board from which the postponement is sought or, if the date of the postmark is identical, the property owner or agent has not requested a postponement of the other hearing; and

(4) the property owner or the owner's agent includes with the request for a postponement a copy of the notice of hearing delivered to the property owner or the owner's agent by the other appraisal review board.

(h) Before the hearing on a protest or immediately after the hearing begins, the chief appraiser and the property owner or the owner's agent shall each provide the other with a copy of any written material or material preserved on a portable device designed to maintain a reproduction of a document or image that the person intends to offer or submit to the appraisal review board at the hearing. Each person must provide the copy of material in the manner and form prescribed by comptroller rule.

(i) To be valid, an affidavit offered under Subsection (b) must be attested to before an officer authorized to administer oaths and include:

(1) the name of the property owner initiating the protest;

(2) a description of the property that is the subject of the protest; and

(3) evidence or argument.

(j) A statement from the property owner that specifies the determination or other action of the chief appraiser, appraisal district, or appraisal review board relating to the subject property from which the property owner seeks relief constitutes sufficient argument under Subsection (i).

(k) The comptroller shall prescribe a standard form for an affidavit offered under Subsection (b). Each appraisal district shall make copies of the affidavit form available to property owners without charge.

(l) A property owner is not required to use the affidavit form prescribed by the comptroller when offering an affidavit under Subsection (b).

(m) If the protest relates to a taxable leasehold or other possessory interest in real property that is owned by this state or a political subdivision of this state, the attorney general or a representative of the state agency that owns the land, if the real property is owned by this state, or a person designated by the political subdivision that owns the real property, as applicable, is entitled to appear at the hearing and offer evidence and argument.

(n) A property owner does not waive the right to appear in person at a protest hearing by submitting an affidavit to the appraisal review board or by electing to appear by telephone conference call. The board may consider an affidavit submitted under this section only if the property owner does not appear in person at the hearing. For purposes of scheduling the hearing, the property owner must state in the affidavit that the property owner does not intend to appear at the hearing or that the property owner intends to appear at the hearing in person or by telephone conference call and that the affidavit may be used only if the property owner does not appear at the hearing in person. If the property owner does not state in the affidavit whether the owner intends to appear at the hearing and has not elected to appear by telephone conference call, the board shall consider the submission of the affidavit as an indication that the property owner does not intend to appear at the hearing. If the property owner states in the affidavit that the owner does not intend to appear at the hearing or does not state in the affidavit whether the owner intends to appear at the hearing and has not elected to appear by telephone conference call, the board is not required to consider the affidavit at the scheduled hearing and may consider the affidavit at a hearing designated for the specific purpose of processing affidavits.

(o) If the chief appraiser uses audiovisual equipment at a hearing on a protest, the appraisal office shall provide audiovisual equipment of the same general type, kind, and character, as prescribed by comptroller rule, for use during the hearing by the property owner or the property owner's agent.

(p) The comptroller by rule shall prescribe:

(1) the manner and form, including security requirements, in which a person must provide a copy of material under Subsection (h), which must allow the appraisal review board to retain the material as part of the board's hearing record; and

(2) specifications for the audiovisual equipment provided by an appraisal district for use by a property owner or the property owner's agent under Subsection (o).

**Credits**

Acts 1979, 66th Leg., p. 2306, ch. 841, § 1, eff. Jan. 1, 1982. Amended by Acts 1981, 67th Leg., 1st C.S., p. 171, ch. 13, § 138, eff. Jan. 1, 1982; Acts 1987, 70th Leg., ch. 794, § 1, eff. June 18, 1987; Acts 1989, 71st Leg., ch. 796, § 37; Acts 1991, 72nd Leg., ch. 836, § 3.1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 828, § 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1039, § 38, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 416, § 3, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 463, § 2, eff. Jan. 1, 2000; Acts 2001, 77th Leg., ch. 1420, § 21.001(99), eff. Sept. 1, 2001; Acts 2007, 80th Leg., ch. 626, § 2, eff. Jan. 1, 2008; Acts 2009, 81st Leg., ch. 1267, § 4, eff. June 19, 2009; Acts 2011, 82nd Leg., ch. 771 (H.B. 1887), § 11, eff. Sept. 1, 2011; Acts 2011, 82nd Leg., ch. 924 (S.B. 1546), § 1, eff. Sept. 1, 2011; Acts 2013, 83rd Leg., ch. 1259 (H.B. 585), § 21, eff. Jan. 1, 2014; Acts 2015, 84th Leg., ch. 1201 (S.B. 1394), § 1, eff. Jan. 1, 2016; Acts 2017, 85th Leg., ch. 80 (H.B. 455), § 1, eff. Sept. 1, 2017; Acts 2017, 85th Leg., ch. 744 (S.B. 1286), § 1, eff. Sept. 1, 2017; Acts 2019, 86th Leg., ch. 944 (S.B. 2), § 62, eff. Sept. 1, 2020.

**Notes of Decisions (29)**

V. T. C. A., Tax Code § 41.45, TX TAX § 41.45

Current through the end of the 2019 Regular Session of the 86th Legislature

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Tab 4:

*Fort Bend Central Appraisal Dist. v. McGee Chapel Baptist Church*, 611 S.W.3d 443 (Tex. App.—Houston [14th Dist.] Oct. 15, 2020)

611 S.W.3d 443  
Court of Appeals of Texas, Houston (14th Dist.).

**FORT BEND CENTRAL  
APPRAISAL DISTRICT**, Appellant

v.

**MCGEE CHAPEL BAPTIST  
CHURCH**, Appellee

NO. 14-19-00334-CV

Opinions filed October 15, 2020

### Synopsis

**Background:** Church brought action against appraisal district seeking judicial review of protest claim contesting district's decision to remove tax exemption for church's real property and of protest claim that church did not receive notice of exemption protest hearing. The 240th District Court, Fort Bend County, denied district's jurisdictional plea. District appealed.

**Holdings:** The Court of Appeals, [Jewell, J.](#), held that:

[1] church had exhausted administrative remedies by obtaining final order as to notice protest, and

[2] church had not exhausted administrative remedies by obtaining final order as to exemption protest.

Affirmed in part, reversed in part, and remanded.

West Headnotes (10)

- [1] **Pleading** 🔑 Plea to the Jurisdiction  
**Pleading** 🔑 Merits

A plea to the jurisdiction is a dilatory plea; its purpose is to defeat a cause of action without regard to whether the claims asserted have merit.

- [2] **Pleading** 🔑 Plea to the Jurisdiction

A plea to the jurisdiction challenges the trial court's jurisdiction over the subject matter of a pleaded claim.

- [3] **Appeal and Error** 🔑 Pleading

The Court of Appeals reviews de novo a trial court's ruling on a plea to the jurisdiction.

- [4] **Pleading** 🔑 Plea to the Jurisdiction

A defendant may prevail on a plea to the jurisdiction by demonstrating that, even if all the plaintiff's pleaded allegations are true, an incurable jurisdictional defect remains on the face of the pleadings that deprives the trial court of subject-matter jurisdiction.

- [5] **Pleading** 🔑 Scope of inquiry and matters considered in general

In determining a plea to the jurisdiction, a trial court may consider the pleadings and any evidence pertinent to the jurisdictional inquiry.

- [6] **Administrative Law and Procedure** 🔑 Exclusive or original jurisdiction

An agency has exclusive jurisdiction when a pervasive regulatory scheme indicates that the legislature intended for the regulatory process to be the exclusive means of remedying the problem to which the regulation is addressed. [Tex. Const. art. 5, § 8.](#)

- [7] **Taxation** 🔑 Exclusiveness of statutory remedy

The Tax Code is a pervasive regulatory scheme evidencing a legislative intent to vest appraisal review boards with exclusive jurisdiction in certain property tax matters. [Tex. Const. art. 5, § 8.](#)

- [8] **Taxation** 🔑 Exhaustion of remedies

Property owners may not pursue judicial relief regarding a tax protest until they have exhausted administrative remedies. *Tex. Tax Code Ann.* § 41.41(a).

**[9] Taxation** 🔑 Exhaustion of remedies

Church had exhausted administrative remedies by obtaining final order as to its protest claim that it did not receive notice of tax-exemption protest hearing, as required for trial court's subject-matter jurisdiction to review appraisal review board's denial of notice protest; board scheduled required hearing on both protests, board did not reach merits of exemption protest only because it found that church received notice but did not attend, and trial court did not lose jurisdiction when church non-suited appraisal review board as Tax Code required that district, not board, be named as the defendant. *Tex. Tax Code Ann.* §§ 41.45(f), 41.411, 42.01(a)(1)(A).

**[10] Taxation** 🔑 Exhaustion of remedies

Church failed to exhaust administrative remedies by obtaining final order as to its protest claim contesting appraisal district's decision to remove tax exemption for church's real property, as required for trial court's subject-matter jurisdiction to review protest; appraisal review board had not taken action on merits of exemption protest because church did not appear at exemption protest hearing, and board did not reach exemption issue when it denied church's subsequent protest claim that it did not receive notice of exemption protest hearing. *Tex. Tax Code Ann.* § 41.411.

**\*444 On Appeal from the 240th District Court, Fort Bend County, Texas, Trial Court Cause No. 17-DCV-241463**

**Attorneys and Law Firms**

Vernique Hutchinson, [Joseph T. Longoria](#), Houston, for Appellant.

[Reginald E. McKamie, Sr.](#), Houston, for Appellee.

Panel consists of Chief Justice [Frost](#) and Justices [Jewell](#) and [Spain](#)

**OPINION**

[Kevin Jewell](#), Justice

**\*445** In this interlocutory appeal in a tax-exemption dispute, appellant Fort Bend Central Appraisal District (the “District”) appeals from the denial of its plea to the jurisdiction. The District raises three issues. First, the District contends that the trial court erred because appellee McGee Chapel Baptist Church did not exhaust its administrative remedies regarding one of two protests at issue. We sustain this issue because McGee Chapel did not obtain an appraisal review board (“ARB”) order regarding that protest before seeking judicial review. Second, the District argues that jurisdiction is lacking because the ARB is the only proper defendant in this lawsuit, but McGee Chapel non-suited its claims against the ARB. We reject this argument as it applies to McGee Chapel's second protest because McGee Chapel obtained a final ARB order on that protest, a trial court has subject-matter jurisdiction to review such an order, and the applicable statute requires the District be named as the defendant. Therefore, the trial court could have determined that jurisdiction exists to review the ARB's order on McGee Chapel's second protest. Third, the District says that the trial court may have relied on an inapplicable statute to deny the plea. We likewise overrule this issue because, assuming the District is correct that the statute in question does not apply, subject-matter jurisdiction exists for alternative reasons, as explained.

As more fully detailed below, we affirm the trial court's order denying the District's jurisdictional plea on McGee Chapel's suit for judicial review of one protest, we reverse the trial court's order as to the other protest, and we remand to the trial court for further proceedings consistent with this opinion.

**Background**

In November 2016, the District notified McGee Chapel that its religious exemption for certain real property located in Fort Bend County (the “Property”),<sup>1</sup> had been removed for tax years 2012, 2013, 2014, 2015, and 2016. McGee Chapel timely protested the District's decision to remove



the Property's tax exemption. We refer to this protest as the "Exemption Protest." The Fort Bend ARB scheduled a hearing on the Exemption Protest for February 23, 2017 (the "Exemption Protest Hearing"). The record contains five documents purporting to be written notices of the Exemption Protest Hearing (one notice for each tax year), all of which are addressed to McGee Chapel's counsel and dated February 1, 2017. All five notices identify the date of the Exemption Protest Hearing as February 23, 2017. McGee Chapel's counsel disputes receiving any of the notices.

The Exemption Protest Hearing occurred on February 23, 2017, but neither McGee Chapel nor its counsel appeared.

McGee Chapel alleges (and the District does not dispute) that it filed another protest with the ARB to establish that it did not receive notice of the Exemption Protest Hearing. *See* [Tex. Tax Code § 41.411\(a\)](#) (property owner may protest failure of ARB "to provide or deliver any notice to which the property owner is entitled"). \*446 We refer to this protest as McGee Chapel's "Section 41.411 Protest." The ARB scheduled a hearing on the Section 41.411 Protest for March 30, 2017, (the "Section 41.411 Protest Hearing") and notified both McGee Chapel and its counsel of the March 30 hearing date. In advance of the hearing, as permitted, McGee Chapel's counsel filed an affidavit, which stated that counsel did not receive notice of the Exemption Protest Hearing by mail or otherwise, that McGee Chapel did not receive notice of the Exemption Protest Hearing by mail,<sup>2</sup> and that counsel did not learn of the Exemption Protest Hearing until after the hearing date passed and then only informally from a church member. Additionally, McGee Chapel's counsel filed affidavits from numerous church members, a church deacon, and a church pastor, all of whom averred that the Property was used for religious activities by the elderly and youth of McGee Chapel.

McGee Chapel's counsel appeared at the Section 41.411 Protest Hearing. Three weeks later, the ARB notified McGee Chapel and its counsel that, after reviewing the protest, the ARB had determined that, according to its records, notice of the Exemption Protest Hearing was "mailed to you and properly delivered" pursuant to [Tax Code section 1.07\(c\)](#).<sup>3</sup> Thus, the ARB denied McGee Chapel's Section 41.411 Protest and therefore did not determine McGee Chapel's Exemption Protest. *See id.* § 41.411(b) (ARB "shall determine a protest made by the property owner" only if failure to provide or deliver notice is established).

McGee Chapel filed suit against the District and the ARB. In its petition, McGee Chapel sought judicial review of both its Exemption Protest and its Section 41.411 Protest. McGee Chapel requested the court to reinstate its tax exemption on the Property because, McGee Chapel alleged, the ARB wrongly denied its Section 41.411 Protest that it failed to receive notice of the Exemption Protest Hearing, and McGee Chapel presented substantial evidence to prove its entitlement to the tax exemption.

The ARB filed an answer and asserted a plea to the jurisdiction based on [Tax Code section 42.21\(b\)](#), which provides that "a petition for review may not be brought against the appraisal review board." [Tex. Tax Code § 42.21\(b\)](#). McGee Chapel later non-suited its claims against the ARB, and the ARB is not a party to this appeal.

The District filed a general denial and a plea to the jurisdiction. In the jurisdictional plea, the District asserted that McGee Chapel did not exhaust administrative remedies regarding the Exemption Protest because it did not obtain a final ARB order from which to appeal the exemption issue.

McGee Chapel filed a response, in which it argued, among other things, that subject-matter jurisdiction existed at least over the ARB's order denying the Section 41.411 Protest because that protest was timely, and McGee Chapel obtained an ARB order determining the protest.

The trial court heard the District's plea to the jurisdiction on October 30, 2018, and January 22, 2019. After the second hearing, both the District and McGee Chapel filed supplemental briefs. In the District's supplemental brief, the District expanded its argument that McGee Chapel had failed to exhaust administrative remedies as to \*447 the Exemption Protest. Separately, the District asserted that the court lacked jurisdiction over all claims because McGee Chapel had non-suited its claims against the ARB, which, according to the District, was the only necessary party authorized to grant the relief requested.

In McGee Chapel's supplemental brief, it reiterated that the court possessed subject-matter jurisdiction over the ARB's order denying its Section 41.411 Protest on the notice issue. Further, McGee Chapel argued that the District is the proper defendant under [section 42.21\(b\)](#), which requires that a petition for judicial review must be brought against an appraisal district, not an appraisal review board. [Tex. Tax Code § 42.21\(b\)](#).

The trial court denied the District's plea to the jurisdiction without stating its reasons.

The District timely appealed.

### Issues Presented

The District asserts that the trial court erred in denying the jurisdictional plea for three reasons. First, the District says the trial court lacks subject-matter jurisdiction to review McGee Chapel's Exemption Protest because McGee Chapel failed to obtain a final ARB order denying the protest and thus failed to exhaust administrative remedies as to that issue.

Second, the District insists that the only final, appealable order at issue in this judicial review proceeding is the ARB's rejection of McGee Chapel's [Section 41.411](#) Protest that McGee Chapel did not receive notice of the Exemption Protest Hearing. Although McGee Chapel undisputedly requested judicial review of that determination, the District says the ARB is the only proper defendant, citing [Tax Code section 41.45\(f\)](#). According to the District, McGee Chapel's non-suit of its claims against the ARB deprived the trial court of subject-matter jurisdiction.

Third, though the order denying the plea to the jurisdiction articulates no specific rationale for the court's ruling, the District argues that subject-matter jurisdiction may not permissibly rest on [Tax Code section 42.01\(b\)](#)—one of the statutory grounds McGee Chapel cited in the trial court—because that section applies only when the ARB denies a taxpayer's protest because the taxpayer did not comply with prepayment requirements, which did not occur here.

### Standard of Review

[1] [2] [3] [4] [5] A plea to the jurisdiction is a dilatory plea; its purpose is “to defeat a cause of action without regard to whether the claims asserted have merit.” [Bland Indep. Sch. Dist. v. Blue](#), 34 S.W.3d 547, 554 (Tex. 2000). Such a plea challenges the trial court's jurisdiction over the subject matter of a pleaded claim. [Tex. Dep't of Parks and Wildlife v. Miranda](#), 133 S.W.3d 217, 226 (Tex. 2004). We review de novo a trial court's ruling on a plea to the jurisdiction. [Id.](#) at 228; [Woodway Drive, L.L.C. v. Harris Cty. Appraisal Dist.](#), 311 S.W.3d 649, 651 (Tex. App.—Houston [14th Dist.]

2010, no pet.). A defendant may prevail on a plea to the jurisdiction by demonstrating that, even if all the plaintiff's pleaded allegations are true, an incurable jurisdictional defect remains on the face of the pleadings that deprives the trial court of subject-matter jurisdiction. [Harris Cty. Appraisal Dist. v. O'Connor & Assocs.](#), 267 S.W.3d 413, 416 (Tex. App.—Houston [14th Dist.] 2008, no pet.). In determining a plea to the jurisdiction, a trial court may consider the pleadings and any evidence pertinent to the jurisdictional inquiry. [Bland ISD](#), 34 S.W.3d at 554-55.

### \*448 Protest and Exhaustion of Administrative Remedies under the Tax Code

[6] [7] Texas state district courts are courts of general jurisdiction and have jurisdiction over all actions, proceedings, and remedies “except in cases where exclusive, appellate, or original jurisdiction may be conferred by [the Texas] Constitution or other law on some other court, tribunal, or administrative body.” [Tex. Const. art. V, § 8](#). An agency has exclusive jurisdiction when a pervasive regulatory scheme indicates that the legislature intended for the regulatory process to be the exclusive means of remedying the problem to which the regulation is addressed. [In re Entergy Corp.](#), 142 S.W.3d 316, 322 (Tex. 2004). The Tax Code is such a pervasive regulatory scheme evidencing a legislative intent to vest appraisal review boards with exclusive jurisdiction in certain property tax matters. [See Vitol, Inc. v. Harris Cty. Appraisal Dist.](#), 529 S.W.3d 159, 166 (Tex. App.—Houston [14th Dist.] 2017, no pet.).

Under chapter 41, property owners are entitled to administratively protest certain actions to the ARB. [See Tex. Tax Code § 41.41\(a\)](#); [Vitol, Inc.](#), 529 S.W.3d at 166. McGee Chapel filed two protests, both of which were allowed under chapter 41: (1) the Exemption Protest in which McGee Chapel challenged the District's decision to remove the Property's tax exemption for tax years 2012-2016;<sup>4</sup> and (2) the [Section 41.411](#) Protest in which McGee Chapel challenged the ARB's alleged failure to deliver notice of the hearing on the first protest.<sup>5</sup> The ARB scheduled and held hearings on both protests, as required. [See Tex. Tax Code § 41.45](#). McGee Chapel did not attend the hearing on the first protest but attended the hearing on the second. The sole purpose of a [section 41.411](#) protest is to determine whether a property owner did not receive notice, thereby depriving the property owner of the right to be heard at the administrative level. [Vitol, Inc.](#), 529 S.W.3d at 166. If the property owner has

complied with filing and payment requirements, then the ARB determines at the hearing whether the property owner was provided the required notice and, if not, the ARB determines the property owner's protest on its merits. *See Tex. Tax Code §§ 41.411(b)-(c), 41.44(c).*

[8] Property owners may not pursue judicial relief regarding a tax protest until they have exhausted administrative remedies. *See Harris Cty. Appraisal Dist. v. ETC Mktg., Ltd.*, 399 S.W.3d 364, 367 (Tex. App.—Houston [14th Dist.] 2013, *pet. denied*). Once a property owner obtains an ARB order determining the owner's protest—including, as here, a protest under chapter 41—the property owner may file a petition for review in district court against the appraisal district challenging the ARB's order. *Tex. Tax Code §§ 42.01(a)(1) (A), 42.21; Cameron Appraisal Dist. v. Rourk*, 194 S.W.3d 501, 502 (Tex. 2006) (*per curiam*); \*449 *Appraisal Review Bd. of Harris Cty. Appraisal Dist. v. Spencer Square Ltd.*, 252 S.W.3d 842, 844 (Tex. App.—Houston [14th Dist.] 2008, *no pet.*). Review in the district court is *de novo*. *Tex. Tax Code § 42.23(a).*

## Analysis

### A. The trial court has subject-matter jurisdiction over whether the ARB erred in denying McGee Chapel's Section 41.411 Protest.

[9] The parties agree, and the record shows, that of McGee Chapel's two protests, the ARB issued an order determining only the second one, the Section 41.411 Protest. McGee Chapel challenged that order in its trial court petition. We begin by considering the District's argument in its second issue that the trial court lacks subject-matter jurisdiction to review the ARB's order rejecting the Section 41.411 Protest.

The crux of the District's argument is that only the ARB is a proper defendant to this action, and the trial court lost jurisdiction when McGee Chapel non-suited the ARB. The District's argument rests on section 41.45(f). Entitled “Hearing on Protest,” section 41.45 describes a property owner's right to a hearing on a protest and the procedures applicable to such a hearing. The part on which the District relies states:

A property owner *who has been denied a hearing to which the property owner is entitled* under [Chapter 41] may bring suit against the appraisal review board by filing a petition or application in district court to compel the board

to provide the hearing. If the property owner is entitled to the hearing, the court shall order the hearing to be held and may award court costs and reasonable attorney fees to the property owner.

*Tex. Tax Code § 41.45(f)* (emphasis added). Highlighting the emphasized text above, the District argues that the ARB must be, but is not, a party to this action, and therefore the trial court should have granted the jurisdictional plea. As the District reads section 41.45(f), McGee was “denied the hearing” on its Exemption Protest because the ARB found that notice of the Exemption Protest Hearing was delivered to McGee Chapel, and thus the ARB did not reach the merits of the Exemption Protest.

We disagree with the District's interpretation of section 41.45(f). This section grants jurisdiction to district courts to compel appraisal review boards to provide the hearing required by section 41.45(a) upon the property owner's filing of a notice of protest, if the appraisal review board, in fact, denies the property owner a hearing. *See Pleasant Hill Cmty. Dev. Corp. v. Appraisal Review Bd. of Harris Cty.*, No. 14-13-01101-CV, 2015 WL 2342588, at \*4 (Tex. App.—Houston [14th Dist.] May 14, 2015, *pet. denied*) (*mem. op.*); *Spencer Square Ltd.*, 252 S.W.3d at 845. Here, however, it is undisputed that the ARB scheduled the required hearing on both of McGee Chapel's protests. McGee Chapel did not attend the first hearing because, it claimed, the ARB failed to provide notice. Had the ARB refused to schedule a hearing on either of McGee Chapel's protests, McGee Chapel could have petitioned the trial court to compel the ARB to conduct a hearing under section 41.45(f). The ARB did not reach the merits of McGee Chapel's Exemption Protest only because it found that McGee Chapel received notice of but did not attend the Exemption Protest Hearing, not because the ARB refused to grant a hearing in the first instance. Thus, section 41.45(f) does not apply. *See Hotel Corp. Int'l v. Harris Cty. Appraisal Dist.*, No. 14-09-00006-CV, 2010 WL 2195461, at \*3 (Tex. App.—Houston [14th Dist.] June 3, 2010, *no pet.*) (*mem. op.*) (stating that section 41.45(f) did not apply because ARB scheduled hearing after notice \*450 of protest filed; property owner failed to appear).

We conclude that the trial court has subject-matter jurisdiction over McGee Chapel's suit to review the denial of its Section 41.411 Protest under section 42.01(a)(1)(A). That section permits appeal of an ARB order determining a property owner's protest under Chapter 41, subchapter C, which includes a section 41.411 protest. *See Tex. Tax Code § 42.01(a)(1)(A); see also Denton Cent. Appraisal Dist. v. CIT*

*Leasing Corp.*, 115 S.W.3d 261, 266 (Tex. App.—Fort Worth 2003, pet. denied). McGee Chapel is appealing the denial of its Section 41.411 Protest, on which it received both a hearing and a ruling. Thus, the trial court has subject-matter jurisdiction over that part of McGee Chapel's lawsuit. See *CIT Leasing Corp.*, 115 S.W.3d at 266 (explaining that, if a property owner is unsuccessful in a section 41.411 protest, it is entitled to appeal the ARB's order to the district court, citing Tex. Tax Code § 42.01(a)(A)). In such a proceeding, moreover, the code requires that the District—not the ARB—be named as the defendant. See Tex. Tax Code § 42.21(b). Accordingly, McGee Chapel's non-suit of its claims against the ARB did not deprive the trial court of subject-matter jurisdiction over McGee Chapel's Section 41.411 Protest appeal.

McGee Chapel also cited section 42.01(b) in support of its jurisdictional arguments, which forms the basis of the District's third issue. The District argues that, to the extent the trial court denied the jurisdictional plea because it found that section 42.01(b) confers jurisdiction, the court erred because that section does not apply.<sup>6</sup> The trial court did not cite section 42.01(b) in support of its order denying the plea or otherwise find that section applicable. In any event, we need not address whether subject-matter jurisdiction exists under section 42.01(b). Because the trial court properly could have determined that section 42.01(a)(1)(A) conferred subject-matter jurisdiction over McGee Chapel's petition to review the ARB's denial of its Section 41.411 Protest, it is irrelevant whether jurisdiction also exists under another section of the Tax Code. See, e.g., *11500 Space Ctr., LLC v. Private Capital Grp., Inc.*, 577 S.W.3d 322, 336 (Tex. App.—Houston [1st Dist.] 2019, no pet.) (declining to address appellant's argument because resolution would not change outcome of appeal, citing Tex. R. App. P. 47.1). Assuming the District is correct that section 42.01(b) does not apply, that conclusion would not compel a reversal of the trial court's order denying the jurisdictional plea.

We overrule the District's second and third issues.

### **B. The trial court lacks subject-matter jurisdiction over McGee Chapel's Exemption Protest.**

[10] McGee Chapel's claims in this lawsuit also include a request to review its \*451 Exemption Protest and to reinstate its property tax exemption for the 2012-2016 tax years. In its plea to the jurisdiction, the District challenged the trial court's subject-matter jurisdiction over that part of the lawsuit

as well. On appeal, the District argues in its first issue that the trial court erroneously denied the jurisdictional plea on McGee's claim to review the merits of the Exemption Protest because McGee Chapel has not exhausted its administrative remedies by obtaining a final order on that issue.

In the trial court, McGee Chapel conceded that the ARB never issued a final order on its Exemption Protest. The record confirms it. The ARB has not taken action on the merits of the exemption because McGee Chapel did not appear at the Exemption Protest Hearing and the ARB denied McGee Chapel's Section 41.411 Protest without reaching the exemption issue. Because the ARB has yet to determine McGee Chapel's Exemption Protest, McGee Chapel has not exhausted its administrative remedies, and the issue is not ripe for judicial review under chapter 42 as to tax years 2012-2016. See, e.g., *Z Bar A Ranch, LP v. Tax Appraisal Dist. of Bell Cty.*, No. 03-18-00517-CV, 2020 WL 1932908, at \*5-7 (Tex. App.—Austin Apr. 22, 2020, no pet. h.) (mem. op.) (party may not obtain district court review of issue that ARB has not considered in the first instance); *ETC Mktg., Ltd.*, 399 S.W.3d at 367 (explaining that Tax Code provides procedures for adjudicating a challenge to an appraisal on the ground that the property is exempt from ad valorem taxation by federal law and that these procedures are “exclusive”); *Midland Cent. Appraisal Dist. v. Plains Mktg., L.P.*, 202 S.W.3d 469, 475 (Tex. App.—Eastland 2006, pet. denied) (when claim “was presented to, debated before, and denied by the [ARB],” then the plaintiff “exhausted its administrative remedies”); see also *Spencer Square Ltd.*, 252 S.W.3d at 844. If McGee Chapel prevails in the trial court on its Section 41.411 Protest claim that the ARB failed to deliver notice of the Exemption Protest Hearing, then the ARB will reach the merits of the claimed exemption on remand. Tex. Tax Code § 41.411(b) (“the appraisal review board shall determine a protest made by the property owner on any other grounds of protest authorized by this title relating to the property to which the notice applies” (emphasis added)).

Our record reflects that, during the pendency of this appeal, McGee Chapel received another property tax assessment on the Property for the 2019 tax year. McGee Chapel filed a notice of protest of the 2019 assessment (the “2019 Protest”). The ARB denied the protest and ordered that the appraisal or market value of the subject property was not excessive and the appraisal records should not be changed. McGee Chapel then amended its petition in the present action to request judicial review of the ARB's determination on McGee Chapel's 2019 Protest. See Tex. Tax Code § 42.21(c) (“If

an appeal under this chapter is pending when the appraisal review board issues an order in a subsequent year under a protest by the same property owner and that protest relates to the same property that is involved in the pending appeal, the property owner may appeal the subsequent appraisal review board order by amending the original petition for the pending appeal to include the grounds for appealing the subsequent order.”).

In its appellate brief, McGee Chapel argues that even if the trial court lacked subject-matter jurisdiction to review both of its protests for the 2012-2016 tax years, we still should affirm the trial court's order denying the District's jurisdictional plea because the trial court has jurisdiction over McGee Chapel's request for judicial \*452 review of the ARB's ruling on the 2019 Protest. McGee Chapel filed the 2019 Protest after the trial court denied the District's jurisdictional plea. McGee Chapel did not amend its petition to request judicial review of the ARB's ruling on the 2019 Protest until after the District had appealed the denial of its jurisdictional plea. Neither in its plea in the trial court nor on appeal has the District asserted that the trial court lacks jurisdiction over the part of the amended petition that challenges the ARB's ruling on the 2019 Protest or that the trial court's jurisdiction over this part of the amended petition affects the trial court's jurisdiction over the other claims before the trial court. On appeal, the District assigns error only as to the trial court's denial of its jurisdictional plea. The District does not assert that the trial court lacks jurisdiction over the part of the amended petition that challenges the ARB's ruling on the 2019 Protest. In this context, the issue of whether the trial court has jurisdiction over this part of the amended petition is not before this court, and we express no opinion on the trial court's jurisdiction over this part of the amended petition.

We sustain the District's first issue and hold that the trial court lacks subject-matter jurisdiction over the part of McGee Chapel's lawsuit seeking judicial review of McGee Chapel's Exemption Protest because McGee Chapel has not exhausted administrative remedies as to that protest. Accordingly, the trial court erred in denying the District's jurisdictional plea in that respect.

### Conclusion

Having concluded that the trial court does not have subject-matter jurisdiction over the part of McGee Chapel's lawsuit seeking judicial review of the Exemption Protest, we reverse

the trial court's order denying the District's plea to the jurisdiction on that claim and remand to the trial court with instructions to dismiss that claim for lack of jurisdiction. We affirm the trial court's order denying the District's jurisdictional plea concerning the part of McGee Chapel's lawsuit seeking judicial review of the ARB's order denying the [Section 41.411](#) Protest.

We remand the case to the trial court for further proceedings consistent with this opinion.

(Spain, J., concurring).

### CONCURRING OPINION

Charles A. Spain, Justice

“Subject matter jurisdiction is never presumed and cannot be waived.” *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443–44 (Tex. 1993). Even when not raised by the parties, defects in subject-matter jurisdiction “may—indeed, *must*—be raised by an appellate court on its own.” *Am. K-9 Detection Servs., LLC v. Freeman*, 556 S.W.3d 246, 260 (Tex. 2018) (citing *Tex. Ass'n of Bus.*, 852 S.W.2d at 445–46). While I agree with the bulk of the court's analysis of this case, I part ways with its treatment of McGee Chapel's argument that the trial court has jurisdiction over McGee Chapel's request for judicial review of the 2019 Protest.

I respectfully concur.

The court writes:

On appeal, the District assigns error only as to the trial court's denial of its jurisdictional plea. The District does not assert that the trial court lacks jurisdiction over the part of the amended petition that challenges the ARB's ruling on the 2019 Protest. In this context, the issue of whether the trial court has jurisdiction over this part of the amended petition is not before this court, and we \*453 express no opinion on the trial court's jurisdiction over this part of the amended petition.

I take issue with the court's characterization of an issue of subject-matter jurisdiction as being “not before this court.” This language flies in the face of the supreme court's explicit guidance that an issue of subject-matter jurisdiction is always

before the court. *See id.*; *see also Waco Indep. Sch. Dist. v. Gibson*, 22 S.W.3d 849, 851 (Tex. 2000) (appellate court erred by failing to consider merits of standing and ripeness challenges on interlocutory appeal even though issues had not been raised in trial court). This is so because an appellate court's jurisdiction derives from the trial court's jurisdiction, giving rise to a responsibility on the part of the appellate court to analyze subject-matter jurisdiction even when the parties have not raised it, and especially when they have, as the court concludes is the case here. *See Am. K-9 Detection Servs.*, 556 S.W.3d at 260 (appellate court “*must*” examine subject-matter jurisdiction on its own); *see also Good Shepherd Med. Ctr., Inc. v. State*, 306 S.W.3d 825, 837 (Tex. App.—Austin 2010, no pet.) (appellate court has “a duty to consider a question of subject-matter jurisdiction sua sponte because the district court's power to decide the merits, as well as our own, rests upon it”) (citing *Texas Ass'n of Bus.*, 852 S.W.2d at 443–46).

I ultimately conclude the record reveals no jurisdictional deficiencies barring disposition of this appeal or further proceedings on remand, and otherwise agree with the court's judgment. However, I disagree with the suggestion that we may ignore a potential defect in subject-matter jurisdiction because it is “not before this court.”

It is elementary that when an intermediate appellate court affirms the trial court in a civil case, the appellate-court judgment, either explicitly or implicitly, is that the trial-court judgment contains (1) no fundamental error and (2) no reversible error as to issues (a) preserved in the trial court, if necessary, and (b) presented on appeal. Issues of fundamental error are *always* before the court, regardless of what the parties do. *See In re A.J.A.R.*, No. 14-20-00084-CV, — S.W.3d —, —, 2020 WL 4275803, at \*1 (Tex. App.—Houston [14th Dist.] July 24, 2020, no pet. h.) (Spain, J., dissenting and concurring) (discussing Robert W. Calvert, *Appellate Court Judgments or Strange Things Happen on the Way to Judgment*, 6 Tex. Tech L. Rev. 915 (1975)); *see also Polaris Guidance Sys., LLC v. EOG Res., Inc.*, 575 S.W.3d 85, 92 (Tex. App.—Houston [14th Dist.] 2019, no pet.) (Spain, J., concurring).

Accordingly, I concur in the court's judgment only.

#### All Citations

611 S.W.3d 443

#### Footnotes

- 1 The property is described more specifically in the record as Fort Bend Central Appraisal District “Property ID 0158-00-000-2900-907,” “0158 D A CONNER, ACRES 9.5760 OUT OF 11.76 ACRE TRACT.”
- 2 The record does not contain any notices addressed to McGee Chapel.
- 3 *See Tex. Tax Code* § 1.07(c) (“A notice permitted to be delivered by first-class mail by this section is presumed delivered when it is deposited in the mail. This presumption is rebuttable when evidence of failure to receive notice is provided.”).
- 4 *See Tex. Tax Code* § 41.41(a)(4), (9). Section 41.41(a)(4) allows a property owner to protest the “denial ... in whole or in part of a partial exemption.” *Id.* § 41.41(a)(4). Subsection (a)(9) authorizes a general protest of “any other action of the chief appraiser [or] appraisal district ... that applies to and adversely affects the property owner.” *Id.* § 41.41(a)(9).
- 5 *See Tex. Tax Code* § 41.411(a) (“A property owner is entitled to protest before the appraisal review board the failure of the chief appraiser or the appraisal review board to provide or deliver any notice to which the property owner is entitled.”)
- 6 Section 42.01(b) provides:  
A property owner who establishes that the owner did not forfeit the right to a final determination of a motion or of a protest in an appeal under Subsection (a)(1)(C) is entitled to a final determination of the court, as applicable:  
(1) of the motion filed under section 25.25; or  
(2) of the protest under Section 41.411 of the failure of the chief appraiser or appraisal review board to provide or deliver a notice to which the property owner is entitled, and, if failure to provide or deliver the notice is established, of a protest made by the property owner on any other grounds of protest authorized by this title relating to the property to which the notice applies.

*Tex. Tax Code* § 42.01(b).

Tab 5:

*Appraisal Review Bd. of Harris Cty.  
Appraisal Dist. v. Spencer Square  
Ltd, 252 S.W.3d 842, 845 (Tex. App.  
—Houston [14th Dist.] 2008)*

252 S.W.3d 842  
Court of Appeals of Texas,  
Houston (14th Dist.).

The APPRAISAL REVIEW  
BOARD OF HARRIS COUNTY  
APPRAISAL DISTRICT, Appellant

v.

SPENCER SQUARE LTD as  
the Property Owners and the  
Property Owners, Appellees.

No. 14-07-00567-CV.

|  
April 29, 2008.

#### Synopsis

**Background:** Property owner, in dispute over property tax valuation, sought writ of mandamus ordering county appraisal board to conduct second protest hearing. The District Court, Harris County, [Sharon McCally, J.](#), denied board's plea to the jurisdiction. The board appealed.

**[Holding:]** The Court of Appeals, Charles W. Seymour, J., held that a second protest hearing was not available to property owner who did not appeal the appraisal board's order to the district court for trial de novo to remedy any errors.

Reversed.

West Headnotes (11)

[1] **Courts** 🔑 Allegations, pleadings, and affidavits

The plaintiff has the burden to plead facts affirmatively demonstrating the trial court has jurisdiction.

1 Cases that cite this headnote

[2] **Pleading** 🔑 Plea to the Jurisdiction

A plea to the jurisdiction is a dilatory plea intended to defeat a cause of action without regard to the merits of the asserted claims.

[3] **Appeal and Error** 🔑 Jurisdiction

In deciding a plea to the jurisdiction, the court of appeals may not consider the merits of the cause of action, but is confined to the allegations in the plaintiff's pleadings and the evidence pertinent to the jurisdictional question.

[4] **Administrative Law and Procedure** 🔑 Exclusive or original jurisdiction

An agency has exclusive jurisdiction when a pervasive regulatory scheme indicates that the Legislature intended for the regulatory process to be the exclusive means of remedying the problem to which the regulation is addressed.

1 Cases that cite this headnote

[5] **Taxation** 🔑 Exclusiveness of statutory remedy

The tax code is a classic example of a pervasive regulatory scheme evidencing a legislative intent to vest the responsible agency with exclusive jurisdiction. [V.T.C.A., Tax Code § 41.45.](#)

2 Cases that cite this headnote

[6] **Taxation** 🔑 Conclusiveness and effect of decision

The tax code provision granting a protest hearing in front of the appraisal review board did not give district court jurisdiction to compel appraisal review board to conduct additional protest hearing after owner decided not to appeal board's order at protest hearing to district court for trial de novo. [V.T.C.A., Tax Code §§ 42.21, 41.45\(f\), 42.23, 42.28.](#)

11 Cases that cite this headnote



[7] **Taxation** 🔑 Complaint or petition of persons aggrieved

**Taxation** 🔑 Hearing

To be entitled to a hearing and determination of a protest for review of an appraisal review board order, the property owner initiating the protest must file a written notice of the protest with the appraisal review board in accordance with the procedural requirements set out in the tax code; upon the filing of a notice of protest, the appraisal review board is required to schedule a hearing on the protest. [V.T.C.A., Tax Code § 41.45](#).

[9 Cases that cite this headnote](#)

[8] **Taxation** 🔑 Trial de novo

Under the tax code provision granting a protest hearing in front of the appraisal review board after the property owner files a written notice of protest, if the property owner is dissatisfied by the determination of the appraisal review board following the protest hearing, the property owner is then entitled to judicial review by a trial de novo in the district court further appealable as any civil case; the provision will not be read as providing an additional avenue to attack an appraisal review board's order by a second protest hearing. [V.T.C.A., Tax Code §§ 41.45\(f\), 42.01, 42.21, 42.23, 42.28](#).

[12 Cases that cite this headnote](#)

[9] **Appeal and Error** 🔑 Trial de novo on review in general

“Trial de novo” is generally defined as a new trial on the entire case, on both questions of fact and issues of law, conducted as if there had been no trial in the first instance.

[3 Cases that cite this headnote](#)

[10] **Appeal and Error** 🔑 Trial de novo on review in general

As a general rule, a trial de novo cures all procedural errors from the proceedings below.

[2 Cases that cite this headnote](#)

[11] **Taxation** 🔑 Trial de novo

The general rule pertaining to trial de novo as curing procedural errors in proceedings below is applicable to review of appraisal review board orders. [V.T.C.A., Tax Code § 42.21](#).

[1 Cases that cite this headnote](#)

### Attorneys and Law Firms

\*843 Tammy Yolanda White–Chaffer, [Robert P. McConnell](#), Houston, for appellants.

[Hugh L. McKenney](#), Houston, for appellees.

Panel consists of JUSTICES FOWLER, [FROST](#), and SEYMORE.

### OPINION

CHARLES W. SEYMORE, Justice.

In this dispute over property tax valuation, appellees, Spencer Square Ltd as the Property Owners and the Property Owners (“Spencer Square”), sought a writ of mandamus in the district court ordering appellant, The Appraisal Board of Harris County Appraisal Review District (“the Board”), to conduct a second protest hearing. The Board appeals from the district court's denial of its plea to the jurisdiction. In two issues, the Board contends (1) the district court is without subject matter jurisdiction to order the Board to conduct a second protest hearing, and (2) the district court has no jurisdiction to review appraisal review board hearings under [section 41.45\(f\) of the Texas Tax Code](#). We reverse the trial court's order denying the Board's plea to the jurisdiction and render judgment dismissing Spencer Square's Petition for Appraisal Review Board Hearing for want of subject matter jurisdiction.

### I. BACKGROUND

For the 2005 tax year, the Harris County Appraisal District appraised Spencer Square's, property at \$2,369,350. Spencer

Square's tax agent timely filed a protest. The Board conducted a hearing on Spencer Square's protest on July 8, 2005.

At the protest hearing, both Spencer Square and the Harris County Appraisal District appeared before a three member panel of the Board. Both parties offered evidence regarding the value of Spencer Square's property. The Board entered its written order on July 27, 2005, reducing the property's appraised value from \$2,369,350 to \$1,882,000.

Spencer Square did not file a petition for review of the order. However, on June 9, 2006, almost one year later, Spencer Square sought a writ of mandamus in the district court to order the Board to conduct a new protest hearing. Spencer Square contended it did not receive a hearing in compliance with the Tax Code. The Board filed a plea to the jurisdiction, which the district court denied. This interlocutory appeal followed.

## \*844 II. ANALYSIS

The issue presented is whether [section 41.45\(f\) of the Texas Tax Code](#) grants the district court subject matter jurisdiction to order the Board to conduct a second protest hearing.

[1] [2] [3] Subject matter jurisdiction is essential to a court's authority to act. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443–44 (Tex.1993). Whether the trial court has subject matter jurisdiction is a question of law that we review de novo. *C.L. Westbrook, Jr. v. Penley*, 231 S.W.3d 389, 394 (Tex.2007). The plaintiff has the burden to plead facts affirmatively demonstrating the trial court has jurisdiction. See *State v. Holland*, 221 S.W.3d 639, 642–43 (Tex.2007). A plea to the jurisdiction is a dilatory plea intended to defeat a cause of action without regard to the merits of the asserted claims. *Bland Indep. School Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex.2000). In deciding a plea to the jurisdiction, we may not consider the merits of the cause of action. *County of Cameron v. Brown*, 80 S.W.3d 549, 555 (Tex.2002). We are confined to the allegations in the plaintiff's pleadings and the evidence pertinent to the jurisdictional question. *Id.*

[4] [5] The district courts are courts of general jurisdiction and have jurisdiction over all actions, proceedings and remedies “except in cases where exclusive, appellate, or original jurisdiction may be conferred by [the Texas] Constitution or other law on some other court, tribunal, or administrative body.” *Tex. Const. Art. V, § 8*. An agency has

exclusive jurisdiction when a pervasive regulatory scheme indicates that the Legislature intended for the regulatory process to be the exclusive means of remedying the problem to which the regulation is addressed. *In re Entergy Corp.*, 142 S.W.3d 316, 322 (Tex.2004). The Tax Code is a classic example of a pervasive regulatory scheme evidencing a legislative intent to vest the responsible agency with exclusive jurisdiction. See *Jim Wells County v. El Paso Prod. Oil & Gas Co.*, 189 S.W.3d 861, 871 (Tex.App.-Houston [1st Dist.] 2006, pet. denied). The Legislature bestowed exclusive original jurisdiction in ad valorem tax cases on the appraisal review boards and granted the district courts appellate jurisdiction over appraisal review board orders. See *Tex. Tax Code Ann §§ 41.45, 42.21* (Vernon 2008); see also *Cameron Appraisal Dist. v. Rourk*, 194 S.W.3d 501, 502 (Tex.2006) (holding appraisal review boards have exclusive original jurisdiction over property tax protests).

[6] Spencer Square argues that it does not seek judicial review of the Board's actions but only seeks a hearing to which it was entitled under the Tax Code. Spencer Square contends the district court has jurisdiction to order an appraisal review board to conduct a new hearing under [Section 41.45\(f\) of the Texas Tax Code](#). [Section 41.45\(f\)](#) provides, in pertinent part:

A property owner who has been denied a hearing to which the property owner is entitled ... may bring suit against the appraisal review board by filing a petition or application in district court to compel the board to provide the hearing. If the property owner is entitled to the hearing, the court shall order the hearing to be held....

*Tex. Tax.Code Ann. § 41.45(f)*. Spencer Square argues that we should construe this language to mean district courts may order an appraisal review board to conduct a new hearing whenever the appraisal review board fails to comply with procedural guidelines contained in the Tax Code. Spencer Square further argues that property owners could be deprived of the informal procedures and burdens of proof the Legislature adopted for property tax valuation \*845 proceedings if we decline to adopt its interpretation of the statute.

[7] [8] However, we conclude Spencer Square's interpretation of [section 41.45\(f\)](#) does not comport with the procedures the Legislature adopted for review of appraisal review board orders. To be entitled to a hearing and determination of a protest, the property owner initiating the protest must file a written notice of the protest with the appraisal review board in accordance with the procedural

requirements set out in the Tax Code. *See Tex. Tax Code Ann. § 41.44(a)* (Vernon 2008). Upon the filing of a notice of protest, the appraisal review board is required to schedule a hearing on the protest. *See Tex. Tax Code Ann. § 41.45(a)*. *Section 41.45(f)* grants jurisdiction to the district courts to compel appraisal review boards to provide a hearing if the appraisal review board denied the property owner a hearing to which he was entitled, i.e. a protest hearing in front of the appraisal review board after the property owner filed a written notice of protest in compliance with the Tax Code. *See Tex. Tax Code Ann. § 41.45(f)*; *see generally Nev. Gold & Silver, Inc. v. Andrews Indep. School Dist.*, 225 S.W.3d 68, 75–76 (Tex.App.-El Paso, 2005, no pet.) (setting forth protest procedure and appellate process). If the property owner is dissatisfied by the determination of the appraisal review board following the protest hearing, the property owner is then entitled to judicial review under Chapter 42 of the Tax Code—a trial de novo in the district court further appealable as any civil case. *See Tex. Tax Code Ann. §§ 42.01, 42.21, 42.23, 42.28* (Vernon 2008).

[9] [10] [11] Trial de novo is generally defined as a new trial on the entire case, on both questions of fact and issues of law, conducted as if there had been no trial in the first instance. *See Lamar County Appraisal Dist. v. Campbell Soup Co.*, 93 S.W.3d 642, 645 (Tex.App.-Texarkana 2002, no pet.) (citing BLACK'S LAW DICTIONARY 1512 (7th ed.1999)). As a general rule, a trial de novo cures all procedural errors from the proceedings below. *Id.* The general rule pertaining to trial de novo is applicable to review of appraisal review board orders. *See id.* at 645–46.

When the Legislature enacted the pertinent provisions of Tax Code, it devised a specific regulatory scheme whereby a property owner may informally present evidence to an

appraisal review board to protest the district's valuation of real property. *See Tex. Tax Code Ann. § 41.45*. Further, in Chapter 42, the Legislature provided a specific appellate process for review of board orders. *See Tex. Tax Code Ann. §§ 42.21, 42.23, 42.28*.

We decline to read *section 41.45(f)* as providing an additional avenue to attack an appraisal review board's order. Following its protest hearing, Spencer Square had the opportunity to appeal the Board's order to the district court for trial de novo to remedy any errors committed by the Board. Apparently, Spencer Square chose not to avail itself of its appellate options. Having forgone such an appeal, Spencer Square missed its opportunity to contest the Board's order. *Section 41.45(f)* grants the district courts authority to compel appraisal review boards to conduct a protest hearing if the appraisal review board denied the property owner a hearing to which he was entitled. *Section 41.45(f)* does not grant the district courts authority to compel appraisal review boards to conduct additional protest hearings. Spencer Square may not now utilize *section 41.45(f)* to circumvent the appellate process mandated by the Tax Code. Therefore, the district court has no subject matter jurisdiction to order a second appraisal review board hearing.

\*846 Accordingly, we sustain the Board's two issues. We reverse the trial court's order denying the Board's plea to the jurisdiction and render judgment dismissing Spencer Square's Petition for Appraisal Review Board Hearing for want of subject matter jurisdiction.

#### All Citations

252 S.W.3d 842

End of Document

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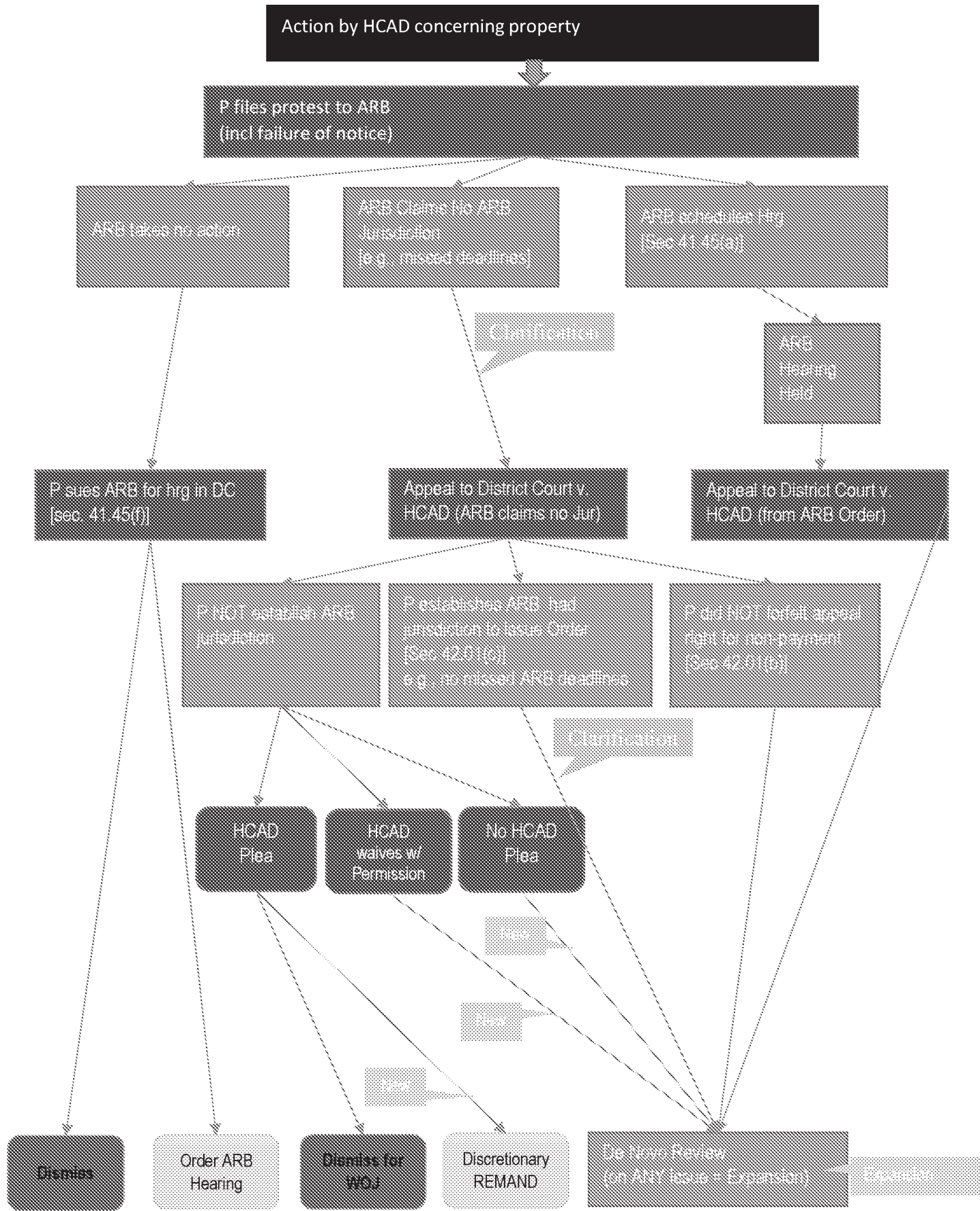
# Optional Contents

Tab 6:

## Appraisal Review and Appeal Process Flowchart

(Exhibit 2 to Harris County  
Appraisal Review Board Plea to the  
Jurisdiction, C.R. 36)

**APPRAISAL REVIEW AND APPEAL PROCESS FLOW CHART - SIMPLIFIED (2020)**



Tab 7:

C.R. 31-35 & C.R. 72

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Mailing Address:  
Appraisal Review Board  
P.O. BOX 920975  
Houston, TX 77292-0975



**Appraisal Review Board**  
of Harris County  
13013 Northwest Fwy, Houston, Texas  
Telephone: (713)957-7800

**Notice of Hearing**



No. 14

DATE: 06/14/2019

12/19/19  
Date

STATE OF TEXAS  
COUNTY OF HARRIS  
This is to certify that this is a true and correct copy of  
an official public record of the Harris County  
Appraisal District in my lawful custody.

\* AGENT \* 004632  
O'CONNOR & ASSOCIATES  
2200 NORTH LOOP W STE 209  
HOUSTON TX 77018-1754

*LINDA YAM*  
Deputy Custodian of Records



Dear Authorized Representative:

The protests, motions, applications, or other requests filed on the accounts listed in the attached document are scheduled for hearings before the Harris County Appraisal Review Board (ARB). The Harris County Appraisal District (HCAD) may also schedule informal meetings. Although you are not obligated to meet with the appraisal district, you must attend the scheduled ARB hearing on each protest. If you do not appear at the scheduled ARB hearing, the matter will be dismissed. If you show good cause or the chief appraiser consents, you may receive postponements of the hearing date(s). You must request a postponement in writing, by facsimile or e-mail to ARB reschedule agent.

SEE ATTACHED SCHEDULE OF INFORMAL MEETINGS & ARB HEARINGS.

You have the right to inspect and obtain copies of the information that the chief appraiser plans to submit. The chief appraiser may also submit supplemental evidence to rebut any issues brought up by you, or at the request of the ARB. Most of this information can be accessed on the internet using your consultant iFile™ number. There are certain classes of information that cannot be placed in the iFile™ internet packet due to technical reasons or copyright restrictions. These include screen prints of the individual property records for your account or any other account, information on the district's website ([www.hcad.org](http://www.hcad.org)) regarding your account or surrounding accounts, and information in the district's property data downloads ([pdata.hcad.org](http://pdata.hcad.org)), aerial photographs, sales maps, sales of property outside the neighborhood or economic area for the property, and information made confidential by law. This information, as well as the information available on the internet, is available for inspection at the appraisal district's information center located on the 3rd Floor. In most cases you may research and obtain copies of the material on the same day. If you are disabled or ill and cannot come to the information center, contact us for assistance in obtaining the information. The charge for copies will not exceed \$15 per residential property or \$25 per property of other types. If you make a written request for information more than 14 days before your hearing, the information will be made available to you at the information center by the 14th day before your hearing. If evidence is presented in electronic format, at least one paper copy must still be provided for evidence. Audio visual equipment exists in all ARB hearing rooms and is available for your use through HDMI and VGA cable connections.

HCAD plans to introduce information available through Google Maps and Google Earth, including but not limited to: maps, satellite imagery, street level photography, geographical and topographical detail, and webcam images. These items may be accessed on the internet at <http://maps.google.com/maps>.

A hearing before the ARB is open to the public unless you ask for it to be closed. If you intend to disclose confidential or proprietary information at your hearing, before the hearing begins, you may request the ARB close the hearing and ask the chief appraiser or his authorized representative to join you in your request. Then both parties sign a prepared joint motion document for the record.

A copy of the appraisal review board's hearing rules was mailed to you under separate cover. Please note that the rules require consultants with multiple dockets or agents to check in at least 30 minutes before the scheduled hearing.

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Schedule of Informal Meetings & ARB Hearings  
All Meeting and Hearings will be held at  
13013 NW Freeway, 1st Floor Houston, TX 77040

06/14/2019

Set ID: 101711



Agent # 004632 O'CONNOR & ASSOCIATES

HCAD Account	Year	Name	Type	HCAD Meeting		ARB Hearing	
				Date	Time	Date	Time
0372050010042	2019	NAV PROPERTIES LLC	REG	07/12/2019	3:25 PM	07/13/2019	3:25 PM



No. 14


STATE OF TEXAS §  
COUNTY OF HARRIS §

This is to certify that this is a true and correct copy of an official public record of the Harris County Appraisal District in my lawful custody.

12/19/19  
Date

Wendy Kay  
Deputy Custodian of Records




 <p>Appraisal Review Board of Harris County 13013 Northwest Fwy Houston, Texas 77040-8305</p>	<p><b>REQUEST TO SET ASIDE HEARING DISMISSAL</b></p>	<p>Account Number:</p> <p style="font-size: 1.2em; font-family: cursive;">037200001000/2 ✓</p>
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Appraisal Review Board ("Board") rules require dismissal of a hearing if the property owner has not appeared within one hour of the scheduled time. If, however, this failure to appear is due to an emergency or unforeseen circumstance beyond the control of the property owner, the Board retains the discretion to schedule a new hearing. You may use this form to ask the Board to set aside its decision to dismiss your hearing and request another hearing date. This form must be submitted before the Board makes a formal ruling involving your appeal. You will receive a notice advising you of the new hearing date, time, and place if a hearing has been rescheduled. Otherwise, you will receive a copy of the Board order dismissing your appeal.

The Board is under no obligation to schedule another hearing where your appeal has been dismissed. It is completely discretionary. Moreover, Board guidelines stipulate your request can only be granted where extraordinary circumstances prevented you from appearing before the ARB and, if the appeal was scheduled on a hearing docket, your request is submitted within four business days from the date of the scheduled hearing.

**INSTRUCTIONS:** Complete all applicable parts of this form and file it with the Harris County appraisal Review Board. Make certain that you write legibly and attach all relevant documents that you want considered in conjunction with this request. If the request is not approved it will be forwarded to the ARB at its next regularly scheduled meeting for consideration by the full board.

Part I - Owner and Property Identification:		 <p>STATE OF TEXAS COUNTY OF HARRIS</p>	
Property Owner's Name		This is to certify that this is a true and correct copy of an official public record of the Harris County Appraisal District in my lawful custody.	
NAV Properties		Request initiated by:	
Mailing Address		Date	
2260 N Loop W, Suite 200 Houston, TX 77018		No. 14     12/19/19     JUL 19 2019 Date	
Property Location		Agent's Name and Code, if any	
0 Commerce St.		4632	
		RECEIVED HEAD HEARING SUPPORT	

Part II - Hearing Information:	
A. Original Hearing Date:	B. Tax Year(s) - Year(s) involved in the hearing
7/12/19 Month / Day / year	2019 ✓     JUL 19 2019
C. Explanation - Provide a detailed explanation stating why you need to have your hearing rescheduled or did not timely appear for your hearing. (attach additional information if needed).	
<p style="font-family: cursive;">David Garza was at HEAD all day on 7/12/19 doing hearings. I am not sure how this account accidentally overlooked. I am requesting the account be reopened for a value hearing as this was not the fault of the property owner. Thank you for your attention to this matter.</p>	

Part III - Property Owner / Representative Signature	
I affirm under penalty of law that the information stated in this document and all attachments is correct. I request the County Appraisal Review Board to schedule another hearing to consider the protest or motion originally filed with the Board. I further understand that it is at the discretion of the Board to either grant or deny this request and its decision is not subjected to appeal.	
Signature	Title
<i>Denise L. Tomarin</i>	Agent dtomarin@cpaconnor.com
Name Printed	Date
Denise L. Tomarin	7/18/19

Part IV - Disposition (FOR ARB USE ONLY)			
deny	Agree <input type="checkbox"/>	Disagree <input checked="" type="checkbox"/>	Required Initials
			ARR by: <i>AST</i>
			Date: 7/22/2019

Donna D Letter Sent 7-22-2019     33



# Harris County Appraisal Review Board

13013 Northwest Freeway  
Houston TX 77040  
Telephone: (713) 812-5600

P.O. Box 920975  
Houston TX 77292-0975  
Information Center: (713) 957-7600

July 22, 2019  
Via First Class Mail

Appraisal Review Board  
Dr. Ronnie Thomas, Chair  
Kathy Williams, Secretary

O'Connor & Associates  
Attn: Denise Tondera  
2200 North Loop W Ste. 200  
Houston, Texas 77018

RE: 037-200-001-0042: NAV Properties LLC

Tax Year: 2019

Dear Denise Tondera,

I am writing in response to your recent inquiry to the Harris County Appraisal Review Board requesting a reschedule on the above referenced accounts.

By this letter, please be advised I have reviewed the ARB's action to dismiss the protests associated with the properties in detail. After considering your request with respect to the hearing rules and procedures established by the ARB and by the Texas Tax Code, Section 41.45, your requests cannot be granted.

I thank you for bringing this matter to our attention and for giving us a chance for review.

Sincerely,

*Dr. Ronnie Thomas*  
Dr. Ronnie Thomas  
Chair



No. 14

STATE OF TEXAS §  
COUNTY OF HARRIS §

This is to certify that this is a true and correct copy of an official public record of the Harris County Appraisal District in my lawful custody.

12/19/19  
Date

*Lindsey Kay*  
Deputy Custodian of Records

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**Mailing Address:**  
Hearings Support Division  
P.O. BOX 920975  
Houston, TX 77292-0975



# Appraisal Review Board

Of Harris County Appraisal District  
13013 Northwest Fwy., Houston, Texas  
Information Center: (713)957-7800

## Notice of Dismissal

PROPERTY DESCRIPTION:  
TRS 2B & 10 PT BLK 68  
ABST 87 S M WILLIAMS

PROPERTY LOCATION:  
0 COMMERCE ST  
HOUSTON, TX 77003

DATE: 07/29/2019

ACCOUNT #: 0372000010042

YEAR: 2019



0372000010042 2019 4632 20190719 00211  
NAV PROPERTIES LLC  
O'CONNOR & ASSOCIATES  
2200 NORTH LOOP W STE 200  
HOUSTON TX 77018-1754

AN ELECTRONIC NOTICE WAS PRODUCED AS REQUESTED  
THIS IS ONLY A REPRESENTATION OF THE NOTICE



Dear Property Owner:

Our records indicate that you or your designated representative did not attend the hearing scheduled for the account shown above. In accordance with the provisions contained in the Texas Property Tax Code, the Harris County Appraisal Review Board delivered a written notice electronically or by mail of the hearing informing you of the date, time and place of the hearing. The notice was addressed using the most current mailing address listed in the appraisal records.

Accordingly, because no one appeared on your behalf for the scheduled hearing, your case was dismissed.

If you have any questions regarding this matter, please call the Harris County Appraisal District's Information Center at (713) 957-7800.

Dr. Ronnie Thomas  
Chairman  
Appraisal Review Board



No. 14

STATE OF TEXAS §  
COUNTY OF HARRIS §

This is to certify that this is a true and correct copy of an official public record of the Harris County Appraisal District in my lawful custody.

12/19/19  
Date

Deputy Custodian of Records

LI201950120-000000211

NN 0000199373



## Harris County Appraisal Review Board

13013 Northwest Freeway  
Houston TX 77040  
Telephone: (713) 812-5800

P.O. Box 920975  
Houston TX 77292-0975  
Information Center: (713) 957-7800

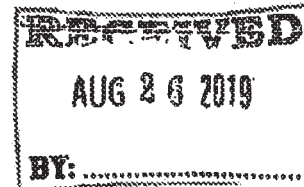
July 22, 2019  
Via First Class Mail

Appraisal Review Board  
Dr. Ronnie Thomas, Chair  
Kathy Williams, Secretary

O'Connor & Associates  
Attn: Denise Tondera  
2200 North Loop W Ste. 200  
Houston, Texas 77018

RE: 037-200-001-0042: NAV Properties LLC

Tax Year: 2019



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I thank you for bringing this matter to our attention and for giving us a chance for review.

Sincerely,

Dr. Ronnie Thomas  
Chair

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Andrea Mintzer on behalf of Seth Hopkins  
Bar No. 24032435  
andrea.mintzer@cao.hctx.net  
Envelope ID: 49428284  
Status as of 1/6/2021 7:04 AM CST

Associated Case Party: NAV Properties LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Hugh McKenney		hughlesie@hotmail.com	1/5/2021 8:31:42 PM	SENT

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Seth Hopkins		seth.hopkins@cao.hctx.net	1/5/2021 8:31:42 PM	SENT
Eric Farrar		efarrar@olsonllp.com	1/5/2021 8:31:42 PM	SENT