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SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

No. 22-0620

IN THE SUPREME COURT OF TEXAS

TEXAS DISPOSAL SYSTEMS LANDFILL INC.,

Petitioner,

v.

TRAVIS CENTRAL APPRAISAL DISTRICT, by and through Marya Crigler, acting in her official capacity as chief appraiser of Travis Central Appraisal District,

Respondent.

RESPONSE TO THE PETITION FOR REVIEW

On Petition for Review from the
Court of Appeals for the Third District of Texas
Cause No. 03-20-00122-CV

HAYNES AND BOONE, LLP

Mark Trachtenberg
State Bar No. 24008169
mark.trachtenberg@haynesboone.com
Ryan Philip Pitts
State Bar No. 24105941
ryan.pitts@haynesboone.com
1221 McKinney, Suite 4000
Houston, Texas 77010-2007
Telephone: (713) 547-2000
Facsimile: (713) 547-2600

EVERTSON & SANCHEZ, P.C.

Karen Evertson
State Bar No. 00797745
karen@texESlaw.com
Mary Sanchez
State Bar No. 17570830
mary@texESlaw.com
2107 Payne Avenue
Austin, Texas 78757
Telephone: (512) 323-0797
Facsimile: (512) 532-6598

ATTORNEYS FOR RESPONDENT
TRAVIS CENTRAL APPRAISAL DISTRICT

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STATEMENT OF THE CASE

Nature of the Case:

This dispute concerns the appraisal value of property used as a landfill for the 2019 tax year. Texas Disposal Systems Landfill Inc. owns the landfill, which Travis Central Appraisal District ("TCAD") appraised at a value of $21,230,464. (CR:42.) Texas Disposal protested before the Travis County Appraisal Review Board ("TCARB") that TCAD's appraisal (1) exceeded market value and (2) was unequal to comparable properties. Texas Disposal later withdrew its market-value challenge. (CR:70; RR:80.) TCARB heard the unequal-appraisal challenge and set a new appraisal value of $2,800,000, more than 80% below TCAD's initial appraisal. (CR:42, 44.)

TCAD initiated a trial de novo of TCARB's appraisal amount in Travis County district court as provided under Texas Tax Code §§ 42.02(a) and 42.23(a), pleading claims that the appraisal was (1) below market value and (2) unequal to comparable properties. (CR:31.)

Trial Court:

Judge Catherine A. Mauzy, 200th Judicial District Court, Travis County.

Trial Court Proceedings & Disposition:

Texas Disposal brought a partial plea to the jurisdiction, arguing that the trial court lacked jurisdiction over TCAD's *below*-market-value challenge to the TCARB appraisal because Texas Disposal had withdrawn its *excessive*-market-value challenge before the TCARB. The trial court granted this plea. (CR:163.) Texas Disposal then filed a second plea to the jurisdiction, arguing that TCAD lacked written approval from its Board of Directors to pursue a trial de novo. The trial court granted Texas Disposal's second plea and entered final judgment in favor of Texas Disposal. (Tab C; CR:358.)

Court of Appeals Disposition: The Third Court of Appeals reversed and remanded in a 3-0 memorandum opinion authored by Justice Goodwin and joined by Justices Triana and Smith. The Third Court held that the trial court erred in granting both of Texas Disposal's pleas to the jurisdiction and dismissing TCAD's claims. *Travis Cent. Appraisal Dist. v. Tex. Disposal Sys. Landfill, Inc.*, No. 03-20-00122-CV, 2022 WL 495048 (Tex. App.—Austin Feb. 18, 2022, pet. filed) (mem. op.) (Tab B). Texas Disposal moved for rehearing and rehearing en banc, which the Third Court denied through an amended memorandum opinion and judgment. *Travis Cent. Appraisal Dist. v. Tex. Disposal Sys. Landfill, Inc.*, No. 03-20-00122-CV, 2022 WL 2236109 (Tex. App.—Austin June 22, 2022, pet. filed) (mem. op.) (Tab A) (*hereinafter* "Op.")

STATEMENT OF JURISDICTION

This Court lacks jurisdiction because this appeal does not present "a question of law that is important to the jurisprudence of" Texas. Tex. Gov't Code § 22.001(a); *see infra* pp.1-3.

ISSUE PRESENTED

Should this Court grant review of the issue presented by Texas Disposal—whether the district court has subject-matter jurisdiction to consider TCAD's pleaded below-market-value claim in its trial de novo under Texas Tax Code § 42.23(a)—considering that:

1. The trial court's final judgment will be vacated and TCAD's trial de novo will proceed regardless of the outcome of Texas Disposal's petition;
2. There is no unsettled issue of law—the plain statutory language and this Court's precedent support the Third Court's conclusion that, when an appraisal district initiates an "appeal" by "trial de novo" of an appraisal determined by the "order" of an appraisal review board, the trial court's *subject-matter jurisdiction* extends to "all issues of fact and law raised by the pleadings in the manner applicable to civil suits generally" (*see* Op.11-17; Tex. Tax Code §§ 42.02(a), 42.23(a)); and
3. The policy concerns raised by Texas Disposal and amici are misguided and provide no basis for divesting a district court of general jurisdiction?

REASONS TO DENY REVIEW

This appeal's current posture should dissuade review. Regardless of the outcome here, TCAD's lawsuit will return to the trial court for proceedings on its challenge to the appraised value of Texas Disposal's landfill.

Texas Disposal asks the Court to review only whether the trial court lacks subject-matter jurisdiction to consider one of TCAD's two claims—that the landfill's appraised value is below market value—in a "trial de novo." But this appeal arises from two jurisdictional pleas filed by Texas Disposal. The first plea concerned TCAD's market-value claim; the second concerned whether TCAD had "written approval" to pursue a "trial de novo" at all. (CR:48-54, 150-62.) The trial court granted each plea, the Third Court reversed on both, and Texas Disposal does not seek review of the reversal on the second plea. (CR:147, 163; Tab C, CR:358.) Because the second plea is what led to the dismissal of both TCAD's claims and a final judgment, the Third Court's vacatur of the final judgment will stand and a "trial de novo" will ensue on one of TCAD's claims no matter how this appeal is resolved.

Just as importantly, this appeal raises no important or unresolved legal question. The Third Court correctly resolved the question presented under clear statutory directives and this Court's precedents. Specifically, in Section 42.23(a) of the Tax Code, the Legislature directed trial courts to "try all issues of fact and law raised by" an appraisal district's "pleadings" in a "trial de novo" of an appraisal. It certainly did not deprive them of their general jurisdiction to comply.

While Texas Disposal and the amici curiae worry that the "trial de novo" burdens property owners and "chills" protests, this concern does not bear on

subject-matter jurisdiction. Nor are their concerns warranted. TCAD has filed **11** lawsuits against property owners over the last decade; property owners initiated **147,039** appraisal protests in 2019 alone. (Pet.2, 18; CR:324.) A "chilling effect" is far-fetched at best. And, in any case, it is not the courts' province to alter the statutory dispute-resolution process for property appraisals as designed by the Legislature, which requires the trial courts to "try all issues of fact and law raised by" the pleadings in a trial de novo.

* * *

The Court's review would not lead to an end of this litigation, to resolving an unsettled question of Texas law, or to an outcome any different than that rendered in the unanimous decision below. It would only further delay this litigation. The improperly granted pleas sidetracked TCAD's lawsuit before discovery commenced, and much work remains in the trial court. To date, the appellate process has taken close to two years to reinstate TCAD's claims.

The Third Court gave this case careful attention. TCAD requests that the Court deny review without merits briefing so that this lawsuit may promptly proceed.

STATEMENT OF FACTS

I. TCAD appraises property at market value for each tax year, a crucial first step in the collection of the property taxes that fund Travis County's critical services.

The Legislature charges appraisal districts with assessing property values for property-tax purposes. Tex. Tax Code § 6.01. These taxes pay for the critical services of local government. (CR:333.) In 2019, property taxes comprised 71% of Travis County's revenue—funding services such as the courts, public schools, law enforcement, and road maintenance. (*Id.*) As the appraisal district for Travis County, TCAD owes a duty to residents to accurately and equitably appraise property so that property owners pay their fair share, thereby helping to avoid tax-rate increases. Tex. Tax Code §§ 6.01, 23.01. TCAD takes this duty seriously.

As of 2021, Travis County encompassed 487,619 parcels of taxable property, meaning TCAD faces an enormous task each year. (CR:324.) By early summer, TCAD is to have assembled "appraisal records listing all property that is taxable in the district and stating the appraised value of each." Tex. Tax Code § 25.01(a). It must ensure that "all taxable property is appraised at its market value as of January 1" for the year. *Id.* § 23.01(a). TCAD sends each property owner notice of the appraisal. *Id.* § 25.19.

Property owners may protest the amount of TCAD's appraisals in proceedings before TCARB. In 2019 alone, property owners initiated 147,039 such protests. (CR:324.) TCAD must participate in TCARB proceedings and almost always accepts TCARB's appraisal determinations, despite having the statutory

right to a "trial de novo" in district court over an appraisal determined by TCARB. Tex. Tax Code §§ 42.02(a)(1), 42.23(a). Texas Disposal admits that TCAD seldom initiates litigation against property owners, doing so only 11 times in the past 10 years. (Pet.8.) TCAD employs its resources carefully and with due respect for TCARB and the rights of property owners.

Section 41.41 of the Tax Code enumerates the protests available to property owners. Two are relevant here. First, property owners may contest the "determination of the appraised value of the . . . property." Tex. Tax Code § 41.41(a)(1). Second, a protest may be brought that the appraisal is "unequal." *Id.* § 41.41(a)(2). This second protest derives from the Texas Constitution: "Taxation shall be equal and uniform." Tex. Const. art. VIII, § 1(a). The statutory test is whether "the appraised value of the property exceeds the median appraised value of a reasonable number of comparable properties appropriately adjusted." Tex. Tax Code § 42.26(a)(3).

II. TCAD appraised Texas Disposal's landfill at $21.7 million for the 2019 tax year, which the Travis County Appraisal Review Board reduced to $2.8 million.

Texas Disposal owns and operates a 344-acre landfill in Travis County. (CR:80.) It asserts that the landfill's appraisal should be low because the land stores waste. TCAD contends the appraisal should be at market value and must be an equitable appraisal. In TCAD's view, the property's market value must incorporate the income approach to value, which would account for the substantial revenue the

landfill generates annually. This same disagreement has arisen in multiple tax years dating back over a decade.[1]

TCAD appraised the market value of the landfill at $21,714,939 for 2019. (CR:42.) Texas Disposal protested on grounds of "excessive market value" and "unequal appraisal." (CR:70.) However, on the evening before TCARB's evidentiary hearing, Texas Disposal withdrew its protest of excessive market value. (CR:70, 80.)

The hearing went forward without the market-value protest. TCAD and Texas Disposal presented arguments and evidence to a panel of three TCARB members. (CR:79.) Afterward, the panel recommended a 2019 appraisal of $2.8 million because "[t]he subject property was unequally appraised." (CR:42.) TCARB adopted the recommendation and, by its order, set the property's appraised value at $2.8 million for 2019. (CR:44.)

III. TCAD initiated a trial de novo to challenge TCARB's far lower appraisal, but the district court granted two pleas to the jurisdiction and dismissed the case.

The Tax Code provides appraisal districts with the right "to appeal an order of the appraisal review board determining … a taxpayer protest." Tex. Tax Code § 42.02(a). The "[r]eview is by trial de novo," and the district court "shall try all

[1] While Texas Disposal has pointed to property valuations of the landfill in other years (Pet.6.), the appraisals for those years were resolved on their own facts and issues. Each tax year must stand on its own for appraisal purposes. *See Jefferson Cnty. Appraisal Dist. v. Morgan*, No. 09-11-00517-CV, 2012 WL 403861, at *3 (Tex. App.—Beaumont Feb. 9, 2012, no pet.) (mem. op.).

issues of fact and law raised by the pleadings in the manner applicable to civil suits generally." *Id.* § 42.23(a).

TCAD exercised this right and initiated a trial de novo in Travis County district court. (CR:4-13.) Its pleading asserted:

> The market value of [Texas Disposal's] property is greater than the determination of [TCARB] and the value set by [TCARB] results in unequal appraisal of the subject property. The [TCARB's] value determination was arbitrary, erroneous, unjust, and unlawful and violated the requirements of TEX. TAX CODE §§ 1.04(7) and 23.01. The result of [TCARB's] determination is an appraisal of the subject property below market and unequal appraised value.

(CR:7.)

Texas Disposal filed two pleas to the jurisdiction. Its first plea argued that the district court lacked subject-matter jurisdiction over TCAD's challenge to the TCARB appraisal ($2.8 million) as *below market value* because Texas Disposal had withdrawn its protest to the appraisal set by TCAD ($21.7 million) as *exceeding market value* in the TCARB proceedings. (CR:20-26.) The second plea argued the district court lacked jurisdiction over the trial de novo altogether because TCAD lacked sufficient "written approval of the board of the appraisal district" to initiate a trial de novo under Texas Tax Code § 42.02(a). (CR:150-62.) The trial court granted both pleas, entered final judgment, and denied reconsideration. (CR:147, 358-59.)

IV. The Court of Appeals reversed and remanded.

A unanimous panel of the Third Court reversed the trial court on both jurisdictional pleas and remanded for proceedings on TCAD's claims. (Tabs A-B.) It further denied Texas Disposal's motions for rehearing and for rehearing *en banc*, issuing an amended opinion with a separate section specifically rejecting the arguments raised here. (Op.14-17.) This petition followed and seeks review only of the Third Court's reversal of the first, partial plea relating to TCAD's below-market-value challenge.

SUMMARY OF ARGUMENT

This appeal is not worth the Court's scarce time. First, the case's posture should dissuade review. *See supra* pp.1-2. The final judgment supporting these appellate proceedings will be vacated when the mandate issues, and TCAD's lawsuit will eventually proceed regardless of the outcome here. The Court's review would have little impact beyond adding another year or two of delay to this case, as well as related disputes over the same property.[2]

Second, aside from this practical point, Texas Disposal is plain wrong on the merits. The Third Court's unanimous decision followed clear statutory directives and this Court's precedents. Section 42.02(a) of the Tax Code authorizes an appraisal district to "appeal" the "order" issued by an appraisal review board setting a new appraisal. Critically, Section 42.23(a) of the Tax Code defines the

[2] Litigation between TCAD and Texas Disposal on the property appraisals for other tax years—2014, 2015, and 2016—has been abated pending the resolution of this appeal. *See* Agreed Order Staying and Abating Trial-Court Proceedings Pending the Resolution of All Appeals, No. D-1-GN-004240 (signed Mar. 9, 2022).

scope of this "appeal." The "[r]eview is by trial de novo," which *requires* the district court to "try all issues of fact and law raised by the pleadings in the manner applicable to civil suits generally." Tex. Tax Code § 42.23(a). Accordingly, in *Willacy County Appraisal District v. Sebastian Cotton & Grain, Ltd.*, this Court affirmed that an appraisal district may plead a new affirmative defense in this trial de novo. 555 S.W.3d 29, 49-50 (Tex. 2018). The Third Court correctly relied on the Tax Code and *Willacy* in holding that the district court had subject-matter jurisdiction over TCAD's pleaded market-value claim in the "trial de novo."

Texas Disposal tries to patch these holes by highlighting purported policy concerns, which various amici curiae echo. But these concerns are unfounded, do not bear on subject-matter jurisdiction, and do not change the statutory framework. For example, Texas Disposal warns of "chilling effects" should the trial court have subject-matter jurisdiction over TCAD's market-value claim, but TCAD has initiated only 11 trials de novo in the last decade—all of which were to protect taxpayers from the effects of what TCAD viewed as unfair TCARB rulings.

And beyond being ameliorated by the Texas Rules of Civil Procedure, these worries are not viable bases for either stripping a trial court of subject-matter jurisdiction, denying appraisal districts access to judicial review, or altering what the Legislature has commanded by statute. The Legislature gave appraisal districts the right to initiate a trial de novo after a property owner lodges a successful protest to an appraisal. It is hardly unjust for TCAD to exercise this right.

TCAD respectfully urges the Court to deny review without requesting merits briefing. There are no unbriefed issues, the record is small, and the statutory

framework resolves the sole question presented. The appellate process here has already taken two years. And the parties must still litigate the entirety of the trial de novo on the landfill's appraisal for the ***2019*** tax year.

ARGUMENT

I. The posture of this case counsels against review.

Because Texas Disposal does not challenge the Third Court's reversal of the plea that disposed of TCAD's lawsuit,[3] this case will return to the trial court for a trial de novo regardless. Texas Disposal urges the Court to excise TCAD's below-market-value claim from this trial de novo, purportedly on subject-matter jurisdiction grounds, but that would be both wrong and a waste of this Court's resources, as explained below.

II. Texas Disposal's sole argument for review disregards the clear statutory framework and this Court's precedent.

The question posed by Texas Disposal about the scope of a trial court's subject-matter jurisdiction for challenges to appraisal amounts has already been settled by the Tax Code and this Court's precedent—authority the Third Court correctly followed.

By directing district courts to "try all issues of fact and law raised by the pleadings" in review "by trial de novo" of a property's appraisal value, the Legislature plainly intended their general subject-matter jurisdiction to extend over

[3] That plea concerned whether TCAD had "written approval" under Texas Tax Code § 42.02(a) to initiate a lawsuit challenging TCARB's 2019 appraisal. (Op.3-11.)

"all issues of fact and law raised by the pleadings." Tex. Tax Code § 42.23(a). Texas Disposal has urged a limitation on a district court's general jurisdiction that defies this statutory text. The Third Court correctly rejected Texas Disposal's argument. (Op.11-17.)

A. The trial court has subject-matter jurisdiction over "all issues of law and fact" raised by TCAD's "pleadings."

The Tax Code reflects the Legislature's unmistakable intent that trial courts have jurisdiction over all the issues raised by an appraisal district's pleadings in a trial de novo of an appraisal amount. *See* Tex. Tax Code § 42.23(a). Nevertheless, Texas Disposal argues that the trial court was stripped of this jurisdiction over only TCAD's *below*-market-value challenge to TCARB's 2019 appraisal of the landfill because TCARB—in setting the challenged appraisal—did not have occasion to decide an *excessive*-market-value protest that Texas Disposal asserted but then withdrew.

Texas Disposal's argument ignores the far-reaching jurisdiction of district courts and that, here, they must "try all issues of fact and law raised by" the "pleadings in the manner applicable to civil suits generally." Tex. Tax Code § 42.23(a). While Texas Disposal says this Court's review "would eliminate confusion about the limits of appraisal-district appeals," no confusion can exist about a trial court's broad subject-matter jurisdiction given the clear statutory directive. (Pet.2.)

The Texas district courts wield general jurisdiction by grant of the Texas Constitution. Tex. Const. art. V, § 8. There is a "constitutional presumption that

district courts are authorized to resolve disputes." *In re Entergy Corp.*, 142 S.W.3d 316, 322 (Tex. 2004) (orig. proceeding); *Dubai Petroleum Co. v. Kazi*, 12 S.W.3d 71, 75 (Tex. 2000). And the Legislature buttressed this constitutional authority: "A district court has original jurisdiction of a civil matter in which the amount in controversy is more than $500, exclusive of interest." Tex. Gov't Code § 24.007(b); *see also id.* § 24.008. These constitutional and statutory bases of authority mean that "district courts are courts of general jurisdiction and generally have subject matter jurisdiction absent a showing to the contrary." *Entergy*, 142 S.W.3d at 322; *Dubai*, 12 S.W.3d at 75.

Accordingly, the trial court has jurisdiction over TCAD's market-value challenge unless the Legislature clearly provided otherwise. Here, rather than suggesting any limitation on jurisdiction, the statutory framework affirms its existence.

Chapter 42 of the Tax Code governs judicial review of property appraisal issues. Section 42.02(a) authorizes TCAD "to appeal an order of the appraisal review board determining . . . a taxpayer protest." Tex. Tax Code § 42.02(a). In compliance, TCAD filed a petition for review in district court, "appealing" the TCARB order that set the landfill's 2019 appraisal at $2.8 million. *See id.* § 42.21(a).

The Legislature defined this "appeal" in a way alien to the ordinary understanding of an "appeal." For this peculiar appeal, "[r]eview is by trial de novo" and "[t]he district court ***shall try all issues of fact and law raised by the pleadings*** in the manner applicable to civil suits generally." *Id.* § 42.23(a) (emphasis added). As this Court has explained, "[s]uch a trial is 'appellate' only as

distinguished from 'original' or 'concurrent,' but not in the sense that the evidence is fixed or that [the] court is confined to that paper record." *Willacy*, 555 S.W.3d at 50. "A trial de novo is a new trial on the entire case—that is, on both questions of fact and issues of law—conducted as if there had been no trial in the first instance." *Id.* at 50. (quotation omitted). The Legislature elaborated that:

- "Any party is entitled to trial by jury."
- The trial court "may not admit in evidence the fact of prior action by the appraisal review board."
- A trial court has power to craft and issue remedies based on the trial de novo's outcome, including "a reduction of the appraised value on the appraisal roll to the appraised value determined by the court."
- With a few exceptions, "[e]vidence, argument, or other testimony offered at an appraisal review board hearing by a property owner or agent is not admissible."

Tex. Tax Code §§ 42.23(b)-(c), (h); 42.24; 42.25.

The Legislature thus made this "appeal" an entirely de novo legal proceeding—a new beginning.

This framework places beyond doubt that the Legislature intended district courts to possess jurisdiction over "all issues of fact and law raised by the pleadings" that they must try. District courts have the general jurisdiction to do as the Legislature commands,[4] and the "Scope of Review" set forth in Section 42.23 would mean next to nothing otherwise. *See Crosstex Energy Servs., L.P. v. Pro Plus, Inc.*, 430 S.W.3d 384, 390 (Tex. 2014) ("We must not interpret the statute in a manner

[4] Tex. Const. art. V, § 8.

that renders any part of the statute meaningless or superfluous." (quotation omitted)).

The Third Court followed this clear statutory framework, holding:

> TCAD is raising by its pleading an issue of fact and law that the stated appraised value in the ARB order is below market value, and the statutory language does not preclude the district court from exercising its jurisdiction to try this issue raised by TCAD's pleadings.

(Op.16 (cleaned up).)

The Third Court's reasoning also aligns with this Court's precedent. In *Willacy*, the Court allowed an appraisal district to assert a new affirmative defense in a trial de novo of an appraisal, despite that the appraisal district had not raised the defense before the appraisal review board. 555 S.W.3d at 50-51.[5] While Texas Disposal contends that "TCAD has never suggested that its market-value cause of action is an affirmative defense" (Pet.23), affirmative defenses must be pleaded and proven just as claims.

B. Texas Disposal tries to conjure up a jurisdictional restriction where none exist.

Rather than address the plain command of Section 42.23(a), Texas Disposal urges that Section 42.02(a)(1) somehow restricts jurisdiction. That provision authorizes appraisal districts to "appeal an order of the appraisal review board determining . . . a taxpayer protest." In Texas Disposal's view, this language

[5] Texas Disposal quotes *In re A.L.M.-F.*, to suggest a trial de novo is only a "retrial on all issues on which judgment was founded." (Pet.22-23.) But the family-law statute in that case differs from Section 42.23(a) and did not mandate "an entirely new and independent action, but" only an "an extension of the original trial on the merits." 593 S.W.3d 271, 280 (Tex. 2019).

supports that the Legislature intended to cabin an appraisal district's appeal and thus a trial court's jurisdiction to no more than the property-owner protests decided within the "order." (Pet.12.) But Section 42.02 does not define the trial court's "Scope of Review"; Section 42.23(a) does that work. In any case, Section 42.02(a)(1)'s language does not say what Texas Disposal wants. It provides an appraisal district with an "appeal," with review by "trial de novo," of the entire "order" issued by the appraisal review board—not narrowly the order's resolution of protests.

The Third Court rightly explained that an appraisal review board's "order" must "'correct the appraisal records by changing the appraised value placed on the protesting property owner's property' and 'must state in the order the appraised value of the property . . . as finally determined by the board.'" (Op.15 (quoting Tex. Tax Code § 41.47(b)-(c).)

Here, the TCARB order at issue set the landfill's appraised value at $2.8 million (CR:44), and everyone agrees that TCAD's pleadings challenge this value as below market value. (Pet.20.) The trial court has no choice but to try the market-value challenge in TCAD's pleadings as Section 42.23(a) instructs; the Legislature nowhere deprived it of the general jurisdiction to do so. *See Cherokee Water Co. v. Gregg Cnty. Appraisal Dist.*, 801 S.W.2d 872, 877 (Tex. 1990) ("Given the appeal of the district's appraisal is by trial de novo, the trial court clearly has power to determine market value whether it be higher or lower than the value determined by the appraisal district.").

While Texas Disposal attaches "significance" to the fact that the dispute process began with its protests, these protests were against an appraisal unilaterally set by TCAD. TCAD has no challenge to assert until after TCARB alters that appraisal—as Texas Disposal agrees (Pet.13)—and a trial de novo thus makes good sense. TCAD receives its opportunity to contest TCARB's appraisal determination.

Texas Disposal's arguments truly seem to sound in waiver or administrative exhaustion, but neither theory has been raised or is applicable. The waiver doctrine is "prudential"[6] in nature—not jurisdictional. (*See* Op.12 n.3.) The appraisal districts need not exhaust any administrative remedies before initiating trials de novo; the trial de novo offers their first opportunity to challenge a lowered ARB appraisal. (Op.12-13.)

* * *

Market value remains of central importance in a trial de novo of a property appraisal. The Tax Code requires property to be "appraised at its market value." Tex. Tax Code § 23.01(a). The unequal-appraisal analysis concerns whether "the appraised value exceeds the median appraised value of a reasonable number of comparable properties appropriately adjusted." Tex. Tax Code § 42.26(a)(3). TCAD's market-value and unequal-appraisal theories are separate but linked challenges. Both claims arise from an initial appraisal of the same property that has the same effective date. Because the Legislature requires appraisal districts to

[6] *In re B.L.D.*, 1113 S.W.3d 340, 350 (Tex. 2003).

appraise property at both its market value and an equitable value, both claims should proceed together as permitted by Section 42.23(a).

C. The Third Court properly focused on subject-matter jurisdiction and refused to opine on the merits.

Texas Disposal complains that the Third Court improperly opined on the merits of TCAD's claims (Pet.19-21), but the Third Court declined to do so:

> [W]e do not reach th[e] merits issues. The question before us today is more limited: Does the district court have jurisdiction over TCAD's market value claim? We conclude that it does.

(Op.11; *accord* Op.14.)

Texas Disposal also calls the Third Court "flatly wrong" by "refusing to recognize that TCAD's two claims—equal-and-uniform and market value—are independent and stand alone." (Pet.21.) This contention flies in the face of the Third Court's language: "Our opinion does not address the legal merits of TCAD's market value claim, nor does it speak to whether a market value claim would prevail over an appraisal value determination based on unequal appraisal." (Op.16.) The Third Court saw the claims as distinct but had no need to go further. (Op.2, 11-17.)

III. Texas Disposal and the amici curiae raise unfounded concerns that do not affect subject-matter jurisdiction.

Trying to bolster its rickety statutory interpretation, Texas Disposal, along with enlisted amici, complain that the "trial de novo" in Section 42.23(a) subjects protesting property owners to litigation and discovery more expansive than the

original protest before the appraisal review board. But their concerns of a "chilling effect" are misplaced.

First, Texas Disposal channels *faux* outrage that—having convinced an appraisal review board to reduce an appraisal by over $18 million—TCAD may challenge the drastically lowered appraisal on grounds of battle different than what Texas Disposal chose. But the target is different: Texas Disposal was challenging TCAD's original $21.2 million appraisal; TCAD is challenging TCARB's lowered $2.8 million appraisal. And, in any case, Texas Disposal's successful protest opened the door to TCAD's trial de novo challenge to the lowered appraisal, much like a party's decision to bring a lawsuit can open the door to the risk of counterclaims.

Of course, if it wished to avoid (and moot) TCAD's market-value challenge, Texas Disposal could have easily stipulated to TCAD's original assessment of market value for 2019 (especially in light of Texas Disposal's abandonment of its market-value challenge before TCARB) and relied solely on its "unequal appraisal" theory to defend TCARB's lowered appraisal. Tellingly, Texas Disposal refused to so stipulate. (RR:58, 64-65.)

Second, the Texas Rules of Civil Procedure dissipate any worries about overbroad discovery. The parties may pursue discovery "in the manner applicable to civil suits generally"—Tex. Tax Code § 42.23(a)—and the Rules limit that discovery to relevant information. *See* Tex. R. Civ. P. 192.3(a); (Op.16.) Moreover, a protective order could safeguard any sensitive information produced in discovery.

Third, the concerns about a "chilling effect" are far-fetched. (Pet.18.) Over the past decade, TCAD has filed 11 trials de novo. (*See* Pet.8.) In contrast, property

owners filed 147,039 protests for the 2019 tax year alone. Property owners filing protests in 2019 faced somewhere around a 0.0007% chance of TCAD initiating litigation. Additionally, even Texas Disposal has described market-value claims as less "complicated" than equal appraisal claims.[7] It is doubtful that such a claim would prevent a property owner from filing a protest, especially given that TCAD rarely brings them.

More fundamentally, Texas Disposal's policy concerns about the "trial de novo" framework cannot justify stripping district courts of subject-matter jurisdiction bestowed by the Constitution and Legislature. As reflected by the statutory framework, both local government and Travis county residents have an interest in everyone paying their fair share of property taxes. It is to TCAD that the Legislature assigned the right and duty of pursuing litigation when necessary to protect taxpayers from the harmful effects of incorrect TCARB determinations. If Texas Disposal and the amici have misgivings about that framework, they can raise them next door in the Capitol.

PRAYER

The trial court possesses subject-matter jurisdiction over TCAD's claims. This 2019 lawsuit should—at long last—proceed to the merits. TCAD respectfully asks the Court to deny review.

[7] Motion for Rehearing, No. 03-20-00122-CV, at 11 (Apr. 5, 2022).

Respectfully submitted,

HAYNES AND BOONE, LLP

/s/ Mark Trachtenberg

Mark Trachtenberg
State Bar No. 24008169
mark.trachtenberg@haynesboone.com
Ryan Philip Pitts
State Bar No. 24105941
ryan.pitts@haynesboone.com
1221 McKinney, Suite 4000
Houston, Texas 77010-2007
Telephone: (713) 547-2000
Facsimile: (713) 547-2600

EVERTSON & SANCHEZ, P.C.

Karen Evertson
State Bar No. 00797745
karen@texESlaw.com
Mary Sanchez
State Bar No. 17570830
mary@texESlaw.com
2107 Payne Avenue
Austin, Texas 78757
Telephone: (512) 323-0797
Facsimile: (512) 532-6598

Attorneys for Respondent
Travis Central Appraisal District

CERTIFICATE OF COMPLIANCE

1. This response complies with the type-volume limitation of Texas Rule of Appellate Procedure 9.4(i)(2)(D) because, according to the Microsoft Word 2016 word-count function, it contains **4,479** words excluding the parts of the response exempted by Texas Rule of Appellate Procedure 9.4(i)(1).

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Dated: January 23, 2023.

/s/ Mark Trachtenberg
Mark Trachtenberg

CERTIFICATE OF SERVICE

In accordance with the Texas Rules of Appellate Procedure, I certify that a true and correct copy of **Respondent's Response to the Petition for Review** was served on the following counsel of record via e-service on January 23, 2023:

Counsel for Petitioner
Texas Disposal Systems, Landfill, Inc.:

Wallace B. Jefferson
wjefferson@adjtlaw.com
Melanie D. Plowman
mplowman@adjtlaw.com
Alexandra Wilson Albright
aalbright@adjtlaw.com
Alexander Dubose & Jefferson LLP
515 Congress Avenue, Suite 2350
Austin, Texas 78701-3562

Lorri Michel
lorri@michelgray.com
Shane Rogers
shane@michelgray.com
Michel Gray & Rogers, LLP
2028 E. Ben White Blvd. # 240-4770
Austin, Texas 78741-6931AD

/s/ Mark Trachtenberg
Mark Trachtenberg

APPENDIX

TAB A

Travis Cent. Appraisal Dist. v. Tex. Disposal Sys. Landfill, Inc.,
No. 03-20-00122-CV, 2022 WL 2236109 (Tex. App.—Austin June 22, 2022,
pet. filed) (mem. op.)

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

ON MOTION FOR REHEARING

NO. 03-20-00122-CV

Travis Central Appraisal District, By and Through Marya Crigler, Acting In Her Official Capacity as Chief Appraiser of Travis Central Appraisal District, Appellant

v.

Texas Disposal Systems Landfill, Inc., Appellee

FROM THE 200TH DISTRICT COURT OF TRAVIS COUNTY
NO. D-1-GN-19-006394, THE HONORABLE CATHERINE MAUZY, JUDGE PRESIDING

M E M O R A N D U M O P I N I O N

We withdraw the opinion and judgment issued on February 18, 2022; substitute the following opinion and judgment in their place; and deny appellee's motion for rehearing.

Travis Central Appraisal District (TCAD) appeals the district court's judgment granting pleas to the jurisdiction filed by Texas Disposal Systems Landfill, Inc. (the Landfill) and dismissing TCAD's claims. For the following reasons, we reverse the judgment and remand to the district court for further proceedings consistent with this opinion.

I. BACKGROUND

The relevant facts are undisputed. For tax year 2019, TCAD appraised the Landfill's property at $21.2 million, and the Landfill protested with the Travis Appraisal Review

Board (the ARB). The Landfill relied on two grounds—market value and unequal appraisal—but withdrew the market value ground the day before the ARB hearing. After the hearing, the ARB found that the appraisal was unequal and reduced the appraised value to $2.8 million.

TCAD, through its chief appraiser, appealed to the district court for a trial de novo, claiming that "the value set by the ARB" results in a "below market value and unequal appraised value." The Landfill filed a plea to the jurisdiction as to TCAD's market value claim, arguing that "TCAD lacks an order determining market value to challenge on appeal" because the ARB determined only an unequal appraisal protest. The district court granted the plea, dismissing TCAD's market value claim but leaving TCAD's unequal appraisal claim. The Landfill filed another plea to the jurisdiction on TCAD's remaining claim, arguing that TCAD improperly relied on a 2017 general resolution by its board of directors—issued two years before the ARB order—to satisfy Section 42.02(a)'s requirement to obtain written approval to appeal. *See* Tex. Tax Code § 42.02(a) (providing that chief appraiser is "entitled to appeal" "[o]n written approval of the board of directors of the appraisal district"). The district court granted the Landfill's second plea, dismissing TCAD's remaining claim and rendering a final judgment.

II. DISCUSSION

In two issues, TCAD challenges the district court's judgment granting the Landfill's pleas to the jurisdiction, which we review de novo. *See Texas Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226–28 (Tex. 2004) (describing standard). First, TCAD argues that Section 42.02(a)'s written approval requirement is not jurisdictional; that regardless, the 2017 general resolution satisfies the requirement; and that even if it is not satisfied, the district court should have abated rather than dismissed the cause. Second, TCAD claims that in a

de novo appeal to the district court, TCAD is not "limited by the arguments that the property owner chooses to raise in the underlying administrative proceeding" and that therefore the district court had jurisdiction to consider its market value claim.

A. Section 42.02(a)'s Written Approval Requirement

We first consider TCAD's challenge to the district court's order granting the Landfill's second plea to the jurisdiction. The Landfill's second plea to the jurisdiction was based on Section 42.02(a), which provides, as relevant here: "On written approval of the board of directors of the appraisal district, the chief appraiser is entitled to appeal an order of the appraisal review board determining: (1) a taxpayer protest as provided by Subchapter C, Chapter 41[.]" Tex. Tax Code § 42.02(a). TCAD argues that "Section 42.02(a) contains 'no explicit language' suggesting any legislative intent, much less a clear intent, that the written-approval requirement be jurisdictional."

1. **Jurisdictional Prerequisite**

Until 2000, Texas law was that "where a cause of action is derived from a statute," "'strict compliance with all statutory prerequisites is necessary to vest a trial court with jurisdiction.'" *Texas Mut. Ins. v. Chicas*, 593 S.W.3d 284, 286 (Tex. 2019) (quoting *Prairie View A&M Univ. v. Chatha*, 381 S.W.3d 500, 510 (Tex. 2012)). But beginning with *Dubai Petroleum Co. v. Kazi*, 12 S.W.3d 71, 76–77 (Tex. 2000), the focus shifted: "The classification of a matter as one of jurisdiction . . . opens the way to making judgments vulnerable to delayed attack for a variety of irregularities that perhaps better ought to be sealed in a judgment," and "the modern direction of policy is to reduce the vulnerability of final judgments to attack on the ground that the tribunal lacked subject matter jurisdiction." *In re United Servs. Auto. Ass'n*, 307

S.W.3d 299, 306 (Tex. 2010) (orig. proceeding) (quoting *Dubai*, 12 S.W.3d at 76); *see also Chicas*, 593 S.W.3d at 286 ("We see no reason that this focus should also not apply to judicial appeals from administrative rulings."). Thus, "the focus post-*Dubai* is to strengthen the finality of judgments and reduce the possibility of delayed attacks." *Chicas*, 593 S.W.3d at 286.

Notwithstanding this shift in focus, the Landfill argues that Section 42.02(a)'s requirement is jurisdictional under *Appraisal Review Board v. International Church of Foursquare Gospel*, 719 S.W.2d 160, 161 (Tex. 1986) (per curiam), and that *Foursquare Gospel*'s holding was reaffirmed by *Matagorda County Appraisal District v. Coastal Liquids Partners, L.P.*, 165 S.W.3d 329, 331 n.5 (Tex. 2005), and *Cameron Appraisal District v. Rourk*, 194 S.W.3d 501, 502–03 (Tex. 2006) (per curiam). *Foursquare Gospel*'s holding, however, is narrower than the Landfill asserts and does not control here. The *Foursquare Gospel* Court concluded that a *taxpayer's* compliance with a requirement from *another statutory provision*—"to include the . . . Appraisal District as a party within 45 days after receiving notice that a final order had been entered"—was jurisdictional. 719 S.W.2d at 161. The *Foursquare Gospel* Court neither addressed the statutory requirements for a chief appraiser—rather than a taxpayer—to appeal nor considered whether the written approval requirement is jurisdictional. Twenty years later, in a footnote aside, the *Matagorda* Court broadly stated, "While we held twenty years ago that compliance with the statutory requirements for appeal from an appraisal review is jurisdictional, we have yet to address whether that holding survives *Dubai*[.]" 165 S.W.3d at 331 n.5 (citation omitted). And in an unremarkable statement regarding exhaustion of administrative remedies, the *Rourk* Court noted, "[W]e have repeatedly held that 'a taxpayer's failure to pursue an appraisal review board proceeding deprives the courts of jurisdiction to decide most matters relating to ad valorem taxes.'" 194 S.W.3d at 502 (quoting *Matagorda*,

165 S.W.3d at 331). *Matagorda* and *Rourk* did not speak to Section 42.02(a)'s requirement, and to the extent that they could be construed as implying that *Foursquare Gospel*'s holding should be extended to *any* and *all* statutory requirements—including those for a chief appraiser and not just the taxpayer—for an appeal from an appraisal review board's order, those statements are non-binding obiter dicta. *See Seger v. Yorkshire Ins.*, 503 S.W.3d 388, 399 (Tex. 2016) ("Obiter dictum is not binding as precedent."). Because there is no controlling precedent as to whether Section 42.02(a)'s written approval requirement for the chief appraiser to appeal is jurisdictional, we apply the post-*Dubai* standard in considering whether the requirement is jurisdictional. *See Mosley v. Texas Health & Human Servs. Comm'n*, 593 S.W.3d 250, 261 n.3 (Tex. 2019) ("[W]e emphasize that *Dubai* and its progeny remain the standard for prospective decisions concerning whether a statutory prerequisite to maintaining a cause of action is mandatory or jurisdictional.").

We begin with the presumption that the Legislature did not intend to make Section 42.02(a)'s requirement jurisdictional; "a presumption overcome only by clear legislative intent to the contrary." *City of DeSoto v. White,* 288 S.W.3d 389, 394 (Tex. 2009); *see also Crosstex Energy Servs., L.P. v. Pro Plus, Inc.*, 430 S.W.3d 384, 391 (Tex. 2014) ("We resist classifying a provision as jurisdictional absent clear legislative intent to that effect."). To ascertain clear legislative intent that a statutory requirement be jurisdictional, we examine the statute's plain language and apply statutory interpretation principles, considering the specified consequences for noncompliance, the purpose of the statute, and the consequences of alternative constructions. *See Chicas*, 593 S.W.3d at 287.

Considering the plain language first, we note that the Legislature knows how to use unequivocal language to make statutory requirements jurisdictional, *see, e.g.*, Tex. Nat. Res. Code § 33.171(d) (providing that "notice requirement" "is a jurisdictional prerequisite to the

institution of suit"), but Section 42.02(a) lacks such unequivocal language, *see* Tex. Tax Code § 42.02(a); *Texas Mut. Ins. v. Ruttiger*, 381 S.W.3d 430, 453 (Tex. 2012) ("We presume the silence is a careful, purposeful, and deliberate choice."). The Legislature has also straightforwardly mandated that "[s]tatutory prerequisites to a suit, including the provision of notice, are jurisdictional requirements in all suits against a governmental entity." Tex. Gov't Code § 311.034; *see Chatha*, 381 S.W.3d at 515 (noting "straightforward mandate that in suits against the government, statutory prerequisites are jurisdictional"). But because a Section 42.02(a) appeal is generally against a private property owner—e.g., the Landfill—and not against a governmental entity, the statutory requirement does not implicate the Legislature's "straightforward mandate." The Landfill argues that the phrase "is entitled to appeal" creates the very right to appeal and therefore is jurisdictional in nature. *See* Tex. Gov't Code § 311.016(4) ("'Is entitled to' creates or recognizes a right.").[1] But "[a]lthough the plain meaning might suggest a jurisdictional bar," we cannot conclude that Section 42.02(a)'s language "meet[s] the requisite level of clarity to establish the statute as jurisdictional," especially when other statutory interpretation principles are considered. *See Crosstex Energy*, 430 S.W.3d at 392 (construing requirement to file certificate of merit with complaint as nonjurisdictional); *cf. In re Department of Fam. & Protective Servs.*, 273 S.W.3d 637, 642 (Tex. 2009) (orig. proceeding) (concluding that "nothing in the language" indicates that "deadlines are jurisdictional," including such

[1] The Landfill cites myriad authorities from our sister courts that have considered jurisdiction over a Section 42.01(a) appeal, *see* Tex. Tax Code § 42.01(a) (stating conditions when "[a] property owner is entitled to appeal"), and argues that Section 42.02(a)'s same "entitled to appeal" language analogously should be considered jurisdictional as well. But in contrast to a Section 42.02(a) appeal, a Section 42.01 appeal is against an appraisal district—a political subdivision of the State with governmental immunity, *id.* § 6.01(c)—and therefore implicates the mandate that such statutory prerequisites be construed as jurisdictional, *see* Tex. Gov't Code § 311.032.

language as trial court "shall dismiss the suit" and "may not retain the suit on the court's docket" when deadlines expire).

Turning to the second consideration, Section 42.02 does not contain specific consequences for noncompliance. "[W]hen a statute does not require dismissal for failure to comply, this weighs in favor of a finding that it is not jurisdictional." *Chicas*, 593 S.W.3d at 289 (citing *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 495 (Tex. 2001)). The cases relying on this principle generally have been considering requirements with a specified deadline, unlike the requirement here. *See, e.g.*, *id.* at 288 (considering 45-day deadline for filing suit); *Helena Chem.*, 47 S.W.3d at 494 (considering requirement that complaint be filed within "time necessary to permit effective inspection"). But to the extent this consideration has any weight here, it weighs in favor of concluding that the requirement is nonjurisdictional.

As to the third consideration, the Legislature did not declare the statute's purpose, which generally means this "factor provides little assistance." *See Crosstex Energy*, 430 S.W.3d at 392. Both parties, however, acknowledge that the purpose is to make boards of directors "gatekeepers" to Section 42.02(a) appeals. This purpose is not necessarily frustrated by construing the requirement as nonjurisdictional. The boards may still act as "gatekeepers" when a chief appraiser's compliance is properly challenged, and the failure to comply with obtaining written approval may still result in the loss of the appeal. *See Helena Chem.*, 47 S.W.3d at 496 (noting that construing timing requirement as nonjurisdictional does not thwart purpose of providing for investigation because board can conduct investigation despite delay); *see also White*, 288 S.W.3d at 393 (noting that failure to comply with nonjurisdictional requirement may result in loss of claim); *Hines v. Hash*, 843 S.W.2d 464, 469 (Tex. 1992) (holding that failure to perform while suit is abated for that purpose may result in dismissal). Thus, to the extent the

third consideration has any weight here, it weighs in favor of concluding that the requirement is nonjurisdictional.

Finally, we consider the consequences of alternative interpretations. If Section 42.02(a)'s written approval requirement were jurisdictional and a chief appraiser successfully pursued an appeal to a final judgment but did not timely get approval, *see* Tex. Tax Code § 42.06(a) (requiring notice of appeal to be filed within fifteen days after receiving notice that order has been issued), or relied on approval that was later determined to be defective—as may be the case here—that judgment would be vulnerable to collateral attack in perpetuity, *cf. Crosstex Energy*, 430 S.W.3d at 392–93 (noting that if certificate of merit requirement were jurisdictional, judgment would be vulnerable to collateral attack and that "statute acts as a procedural bar for claims without a certificate of merit" but that "[i]t does not follow that because the Legislature created this procedural bar, it also wanted to create a basis for attacking the judgment in perpetuity"); *Dubai*, 12 S.W.3d at 76 ("When, as here, it is difficult to tell whether or not the parties have satisfied the requisites of a particular statute, it seems perverse to treat a judgment as perpetually void merely because the court or the parties made a good-faith mistake in interpreting the law."). On the other hand, as we have already noted, the purpose of the requirement (as described by the parties) would not be frustrated by construing the requirement as nonjurisdictional, and the Landfill has not identified any other negative consequences for such a construction. Accordingly, this last consideration weighs in favor of construing Section 42.02(a)'s requirement as nonjurisdictional.

Weighing these considerations, we conclude that Section 42.02(a)'s written approval requirement is not jurisdictional.

2. **Proper Remedy**

TCAD argues that if we conclude that Section 42.02(a)'s written approval requirement is not jurisdictional, then we must determine whether the 2017 general resolution satisfied the requirement and if it did not, what the proper remedy is for the failure to comply, citing *White*, 288 S.W.3d at 398 ("Having determined that the notice provision is not jurisdictional, we must determine the proper remedy, if any, for the City's failure to comply."). But *White* involved a different procedural posture. After receiving a suspension letter from the police department, White had the option of appealing either to the Civil Service Commission or an independent third-party hearing examiner. *Id.* at 391. White elected to appeal to an independent third-party hearing examiner but then argued that the examiner was without jurisdiction to hear his appeal because the suspension letter did not satisfy the requirement to "notify White that an appeal to a hearing examiner would limit his ability to seek further review with a district court judge." *Id.* White filed suit in district court under a statutory provision "permitting judicial review of hearing examiner decision on grounds that the examiner was without jurisdiction." *Id.* at 392 (citing Tex. Loc. Gov't Code § 143.057(j)). The district court granted summary judgment in White's favor, which the City appealed. *Id.* In that procedural posture, the Texas Supreme Court concluded that the notice requirement did not deprive the hearing examiner of jurisdiction, "determine[d] the proper remedy" for failure to comply with the nonjurisdictional statutory requirement, and remanded the case to the district court in the interest of justice "with instructions to remand to the hearing examiner, so that White has an opportunity to make an appellate election with full knowledge of his appellate rights and with knowledge of our guidance in this opinion." *Id.* at 398, 401.

In contrast, the procedural posture here is an appeal from the district court's granting of the Landfill's pleas to the jurisdiction regarding the *district court's* jurisdiction over TCAD's claims. And as an intermediate court and in contrast to the Texas Supreme Court, we are instructed to "hand down a written opinion that is as brief as practicable but that addresses every issue raised *and necessary* to final disposition of the appeal." *Compare* Tex. R. App. P. 47.1 (emphasis added), *with id.* R. 63 ("The Supreme Court will hand down a written opinion in all cases in which it renders a judgment."). Accordingly, we sustain TCAD's first issue to the extent that it asks us to reverse the district court's order granting the Landfill's second plea to the jurisdiction based on the Section 42.02(a) issue.[2]

[2] The Landfill also contends that because the 2017 resolution did not satisfy Section 42.02(a)'s requirement, the chief appraiser "lacked authority to file a notice of appeal" in the district court. We construe this argument as a contention that the chief appraiser lacked capacity to appeal the ARB order. *See* Tex. R. Civ. P. 93(1)–(2) (requiring verified plea to challenge when "plaintiff has not legal capacity to sue" or "plaintiff is not entitled to recover in the capacity in which he sues"); *Pike v. Texas EMC Mgmt., LLC*, 610 S.W.3d 763, 779 (Tex. 2020) (holding that question whether claim brought by partner actually belongs to partnership is matter of capacity and noting that "capacity 'is conceived of as a procedural issue dealing with the personal qualifications of a party to litigate'" (quoting *Austin Nursing Ctr., Inc. v. Lovato*, 171S.W.3d 845, 848 (Tex. 2005))). Capacity, however, generally does not implicate a court's subject matter jurisdiction and may be waived. *Pike*, 610 S.W.3d at 778–79. The defendant has the burden to challenge capacity via verified plea, and if properly challenged, "the trial court should abate the case and give the plaintiff a reasonable time to cure any defect." *Lovato*, 171 S.W.3d at 853 n.7; *cf. Kinder Morgan SACROC, LP v. Scurry County*, 622 S.W.3d 835, 838, 846 (Tex. 2021) (holding that invalidity of legal services contract does not invalidate bona fide attempt to invoke trial court's jurisdiction and noting that "[a] bona fide effort to invoke the trial court's jurisdiction may be defective, but it is not void, and the proceedings cannot be dismissed without affording an opportunity to refile a proper instrument, if necessary"). To the extent that the district court granted the Landfill's second plea to the jurisdiction and dismissed the cause on the ground that the chief appraiser lacked capacity to appeal the ARB order, we conclude that it erred.

B. Market Value Claim

In its second issue on appeal, TCAD challenges the district court's dismissal of its market value claim. TCAD initially found the market value of the Landfill's property to be $21,714,939 and appraised the property at $21,230,464 after certain deductions. Because the Landfill withdrew its market value protest, the ARB did not determine market value; instead, the ARB determined that "[t]he subject property was unequally appraised, and the appraisal records should be adjusted to reflect a value of $2,800,000." The chief appraiser then appealed the ARB order determining the Landfill's protest. In such an appeal, "[r]eview is by trial de novo," and "[t]he district court shall try all issues of fact and law raised by the pleadings in the manner applicable to civil suits generally." Tex. Tax Code § 42.23(a); *see also Willacy Cnty. Appraisal Dist. v. Sebastian Cotton & Grain, Ltd.*, 555 S.W.3d 29, 50 (Tex. 2018) ("A trial de novo is '[a] new trial on the entire case—that is, on both questions of fact and issues of law—conducted as if there had been no trial in the first instance.'" (quoting *Trial De Novo*, Black's Law Dictionary (10th ed. 2014))).

As its market value claim, TCAD asserted that "[t]he market value of [the Landfill's] property is greater than the determination of the ARB" and that "[t]he result of the ARB's determination is an appraisal of the subject property below market value[.]" But we do not reach those merit issues. The question before us today is more limited: Does the district court have jurisdiction over TCAD's market value claim? We conclude that it does.

The Landfill raises two arguments for why jurisdiction does not exist over TCAD's market value claim. First, the Landfill argues that the ARB did not determine market value, and therefore an appeal from "an order of the appraisal review board determining . . . a taxpayer protest" does not encompass a market value claim if the ARB did not determine market

value. But TCAD's market value claim is not challenging the ARB's market value determination; TCAD is challenging the ARB's appraisal value determination on the ground that it is below market value.[3] TCAD may or may not be successful on the merits, but the statutory language providing for an appeal from "an order of the appraisal review board determining . . . a taxpayer protest" does not preclude such a challenge. *See* Tex. Tax Code § 42.02(a).

Second, the Landfill argues that "TCAD's de novo theory is at odds with the exclusive-remedies scheme established by the Property Tax Code" and that "[p]ermitting a district court to resolve new protest grounds would denigrate the administrative hearing process and the exclusive-remedies scheme established by the Property Tax Code." But the statutory scheme provides that on appeal the district court may "fix the appraised value of property in accordance with the requirements of law if the appraised value is at issue." *Id.* § 42.24(1); *see also Cherokee Water Co. v. Gregg Cnty. Appraisal Dist.*, 801 S.W.2d 872, 877 (Tex. 1990) ("Given the appeal of the district's appraisal is by trial de novo, the trial court clearly has power to determine market value whether it be higher or lower than the value determined by the appraisal district."). The Landfill quotes our holding that "a trial de novo does not provide the plaintiff with the right to introduce new claims that were not raised and considered by the ARB." *Z Bar A Ranch, LP v. Tax Appraisal Dist. of Bell Cnty.*, No. 03-18-00517-CV, 2020 WL 1932908, at *6 (Tex. App.—Austin Apr. 22, 2020, no pet.) (mem. op.). But *Z Bar* concerned whether the plaintiff taxpayer had exhausted administrative remedies prior to appealing the appraisal review board's order. *Id.* at *6–8. Here, in contrast, TCAD—not the protesting taxpayer—is appealing the ARB order. As our sister court has noted:

[3] We do not address whether TCAD was required to raise the issue before the ARB to preserve it; here, the Landfill concedes that it "has not raised waiver and the district court did not rely on waiver in dismissing the market-value claim."

> Unlike the property owner, the appraisal district had no prior administrative remedy to exhaust at the ARB stage of the proceedings. As the entity responsible for the initial property valuation, the appraisal district had no right to initiate the protest procedure and no control over what objections would be presented by the property owner to the ARB. Regardless of what issues were presented by the property owner, the appraisal district had no grievance until the ARB altered its determination of the property's market value and appraised value. The statutory procedure for the appraisal district to complain about the ARB's ruling began with its right of "appeal" to the district court for a trial de novo. Thus, because the appraisal district contended that the ARB erred by reducing the property's market value and appraised value, and it followed the statutory procedures for initiating an appeal, it had standing to challenge the ARB's order in accordance with its statutory right to do so. There was no prior administrative procedure available to the appraisal district that it failed to exhaust.

Harris Cnty. Appraisal Dist. v. Houston 8th Wonder Prop., L.P., 395 S.W.3d 245, 251 (Tex. App.—Houston [1st Dist.] 2012, pet. denied). Although the appraisal district in *Houston 8th Wonder* contested the appraisal review board's alteration of *both* the market value and appraised value, here the ARB determined that "the subject property was unequally appraised" and that "the appraisal records should be adjusted to reflect a value of $2,800,000." Nevertheless, in its de novo trial before the district court, TCAD is contesting the ARB's determination of the appraisal value as below market value (along with its other claim that the ARB's determination is an unequal appraisal); TCAD had no complaint until after the ARB had made its determination and adjusted the appraisal value, and "[t]here was no prior administrative procedure available to the appraisal district that it failed to exhaust." *Id.*

Accordingly, we conclude that the district court erred in granting the Landfill's plea to the jurisdiction and dismissing TCAD's claim that the ARB's determination of the appraisal value is below market value.

III. THE LANDFILL'S REHEARING MOTION

In a motion for rehearing, the Landfill argues that "the Court's conclusion here that [TCAD] can challenge the Section 42.26(a)(3) unequal-appraisal value on the basis that it does not represent the property's market value" "conflicts with these deliberate rejections of market value's relevance to an equal-and-uniform value," citing *In re Catherine Tower, LLC*, 553 S.W.3d 679, 686 (Tex. App.—Austin 2018, orig. proceeding), *Weingarten Realty Investors v. Harris County Appraisal District*, 93 S.W.3d 280, 287 (Tex. App.—Houston [14th Dist.] 2002, no pet.), and *Harris County Appraisal District v. United Investors Realty Trust*, 47 S.W.3d 648, 653 (Tex. App.—Houston [14th Dist.] 2001, pet. denied). We also have received myriad amicus briefs supporting rehearing and raising three primary concerns: (1) that the opinion collapses the distinction between an unequal appraisal claim and a market value claim, (2) that the opinion will lead to discovery on market value as relevant to a taxpayer's unequal appraisal protest, and (3) that the opinion will chill taxpayer protests if a central appraisal district could raise a market value claim on appeal as taxpayers may forgo an unequal appraisal protest to avoid possible discovery on appeal related to the property's market value.

These concerns and the cited cases, however, do not address the procedural posture of this appeal: our inquiry at this stage concerns the district court's jurisdiction over TCAD's market value claim, not the merits of the claim or the relevance of discovery.

As we have mentioned above, the "Scope of Review" is "trial de novo," and "[t]he district court shall try all issues of fact and law raised by the pleadings in the manner applicable to civil suits generally." Tex. Tax Code § 42.23(a). "A party who appeals as provided by this chapter must file a petition for review," but the statutory provision requiring a party to file a petition for review does not limit the issues of fact and law that may be raised. *Id.*

§ 42.21(a). The chapter provides that "the chief appraiser is entitled to appeal an order of the appraisal review board determining: (1) a taxpayer protest," *id.* § 42.02(a), but it is the ARB's order that is being appealed, not merely the ARB's protest determination, *see, e.g.*, *id.* § 42.06(a) (setting forth notice of appeal requirements "[t]o exercise the party's right to appeal an order of an appraisal review board"). The statutory scheme requires that the ARB "shall determine the protest and make its decision by written order." *Id.* § 41.47(a). But the ARB, "by its order," also "shall correct the appraisal records by changing the appraised value placed on the protesting property owner's property" and "must state in the order the appraised value of the property . . . as finally determined by the board." *Id.* § 41.47(b)–(c).

Here, TCAD is appealing this "order . . . determining . . . a taxpayer protest" for review by "trial de novo,"[4] challenging the changed appraised value as stated in the ARB order.[5] *See id.* §§ 41.47(b)–(c), 42.02(a), .23(a). In its market value claim, TCAD raises the ground that the order lists an appraised value below market value, notwithstanding that the ARB order based the adjusted appraised value on an unequal appraisal ground, and requests in its petition that

[4] "A 'trial de novo' is a new and independent action in the reviewing court with 'all the attributes of an original action' as if no trial of any kind has occurred in the court below." *Interest of A.L.M.-F.*, 593 S.W.3d 271, 277 (Tex. 2019) (quoting *Key W. Life Ins. v. State Bd. of Ins.*, 350 S.W.2d 839, 846 (Tex. 1961)). The Landfill cites *Rice v. Pinney* for the proposition that "courts have recognized jurisdictional limits in a trial de novo proceeding," but that case relied on express statutory and rule provisions denying jurisdiction to a statutory county court to adjudicate title to land notwithstanding the grant of general jurisdiction for a de novo trial following an appeal of a forcible detainer suit from justice court. 51 S.W.3d 705, 708–09 (Tex. App.—Dallas 2001, no pet.) (citing Tex. Gov't Code § 27.031(b); Tex. R. Civ. P. 746).

[5] TCAD's petition states, "The market value of [the Landfill's] property is greater than the determination of the ARB and the value set by the ARB results in unequal appraisal of the subject property. The ARB's value determination was arbitrary, erroneous, unjust, and unlawful and violated the requirements of Tex. Tax Code §§ 1.04(7) and 23.01. The result of the ARB's determination is an appraisal of the subject property below market value and unequal appraised value."

"judgment be entered fixing the 2019 appraised value of the [Landfill's] property at no less than its market value, in accordance with the requirements of law and as authorized by [Section] 42.24(1)," which provides that "[i]n determining an appeal, the district court may: (1) fix the appraised value of property in accordance with the requirements of law if the appraised value is at issue." *See id.* § 42.24(1). Thus, TCAD is "rais[ing] by [its] pleading" an "issue[] of fact and law" that the stated appraised value in the ARB order is below market value, and the statutory language does not preclude the district court from exercising its jurisdiction to try this issue raised by TCAD's pleadings. *See id.* § 42.23(a).

TCAD characterizes the Landfill's rehearing argument as "that a district court has no *jurisdiction* over a market value claim in a trial de novo of an appraisal set by an [ARB] on unequal appraisal grounds, because the latter claim has been held to prevail over the former when the two values conflict." TCAD notes, however, that "[w]hich claim prevails in a conflict goes to the merits." Our opinion does not address the legal merits of TCAD's market value claim, nor does it speak to whether a market value claim would prevail over an appraisal value determination based on unequal appraisal. To the extent that the Landfill believes that TCAD's market value claim is legally baseless or fails as a matter of law, procedural mechanisms provide for the disposal of the claim on such grounds and are available at early stages of the litigation, including before discovery is taken. *See id.* ("The district court shall try all issues of fact and law raised by the pleadings in the manner applicable to civil suits generally."); *see also, e.g.*, Tex. R. Civ. P. 91a (providing for dismissal of cause of action that has no basis in law), 166a(c) (providing for summary judgment if "moving party is entitled to judgment as a matter of law"). But whether a claim is legally baseless or fails as a matter of law invokes a different inquiry than that presented in an appeal from an order granting a plea to the jurisdiction. *See, e.g.*, *Reaves v.*

City of Corpus Christi, 518 S.W.3d 594, 605 (Tex. App.—Corpus Christi–Edinburg 2017, no pet.) ("We also note that whereas rule 91a was designed to allow for the dismissal of baseless claims, the purpose of a plea to the jurisdiction is to defeat a cause of action without regard to whether the claims asserted have merit.").

IV. CONCLUSION

For these reasons, we reverse the district court's judgment and remand for further proceedings consistent with this opinion.

Melissa Goodwin, Justice

Before Justices Goodwin, Triana, and Smith

Reversed and Remanded on Motion for Rehearing

Filed: June 22, 2022

TAB B

Travis Cent. Appraisal Dist. v. Tex. Disposal Sys. Landfill, Inc.,
No. 03-20-00122-CV, 2022 WL 495048 (Tex. App.—Austin Feb. 18, 2022,
pet. filed) (mem. op.)

2022 WL 495048
Only the Westlaw citation is currently available.

SEE TX R RAP RULE 47.2 FOR DESIGNATION AND SIGNING OF OPINIONS.

Court of Appeals of Texas, Austin.

TRAVIS CENTRAL APPRAISAL DISTRICT, BY AND THROUGH Marya CRIGLER, Acting In Her Official Capacity as Chief Appraiser of Travis Central Appraisal District, Appellant
v.
TEXAS DISPOSAL SYSTEMS LANDFILL, INC., Appellee

NO. 03-20-00122-CV
|
Filed: February 18, 2022

FROM THE 200TH DISTRICT COURT OF TRAVIS COUNTY, NO. D-1-GN-19-006394, THE HONORABLE CATHERINE MAUZY, JUDGE PRESIDING

Attorneys and Law Firms

Mark R. Trachtenberg, Ryan Pitts, Haynes & Boone, LLP, 1221 McKinney St Ste 2100, Houston, TX 77010, Mary Sanchez, Karen Evertson, c/o Travis Central Appraisal District, 8314 Cross Park Drive, Austin, TX 78754, for Appellant.

Melanie Plowman, Wallace B. Jefferson, Alexander Dubose & Jefferson LLP, 515 Congress Ave., Suite 2350, Austin, TX 78701-3562, Lorri Michel, Shane Rogers, Michel Gray LLC, 812 W. 11th Street, Suite 301, Austin, TX 78701, for Appellee.
Before Justices Goodwin, Triana, and Smith

MEMORANDUM OPINION

Melissa Goodwin, Justice

***1** Travis Central Appraisal District (TCAD) appeals from the district court's judgment granting pleas to the jurisdiction filed by Texas Disposal Systems Landfill, Inc. (the Landfill) and dismissing TCAD's claims. For the following reasons, we reverse the judgment and remand to the district court for further proceedings consistent with this opinion.

I. BACKGROUND

The relevant facts are undisputed. For tax year 2019, TCAD appraised the Landfill's property at $21.2 million, and the Landfill protested with the Travis Appraisal Review Board (the ARB). The Landfill relied on two grounds—market value and unequal appraisal—but withdrew the market value ground the day before the ARB hearing. After the hearing, the ARB found that the appraisal was unequal and reduced the appraised value to $2.8 million.

TCAD, through its chief appraiser, appealed to the district court for a trial de novo, claiming that "the value set by the ARB" results in a "below market value and unequal appraised value." The Landfill filed a plea to the jurisdiction as to TCAD's market value claim, arguing that "TCAD lacks an order determining market value to challenge on appeal" because the ARB determined only an unequal appraisal protest. The district court granted the plea, dismissing TCAD's market value claim but leaving TCAD's unequal appraisal claim. The Landfill filed another plea to the jurisdiction on TCAD's remaining claim, arguing that TCAD improperly relied on a 2017 general resolution by its board of directors—issued two years before the ARB order—to satisfy Section 42.02(a)'s requirement to obtain written approval to appeal. *See* Tex. Tax Code § 42.02(a)

(providing that chief appraiser is "entitled to appeal" "[o]n written approval of the board of directors of the appraisal district"). The district court granted the Landfill's second plea, dismissing TCAD's remaining claim and rendering a final judgment.

II. DISCUSSION

In two issues, TCAD challenges the district court's judgment granting the Landfill's pleas to the jurisdiction, which we review de novo. *See Texas Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226–28 (Tex. 2004) (describing standard). First, TCAD argues that Section 42.02(a)'s written approval requirement is not jurisdictional; that regardless, the 2017 general resolution satisfies the requirement; and that even if it is not satisfied, the district court should have abated rather than dismissed the cause. Second, TCAD claims that in a de novo appeal to the district court, TCAD is not "limited by the arguments that the property owner chooses to raise in the underlying administrative proceeding" and that therefore the district court had jurisdiction to consider its market value claim.

A. Section 42.02(a)'s Written Approval Requirement

We first consider TCAD's challenge to the district court's order granting the Landfill's second plea to the jurisdiction. The Landfill's second plea to the jurisdiction was based on Section 42.02(a), which provides, as relevant here: "On written approval of the board of directors of the appraisal district, the chief appraiser is entitled to appeal an order of the appraisal review board determining: (1) a taxpayer protest as provided by Subchapter C, Chapter 41[.]" Tex. Tax Code § 42.02(a). TCAD argues that "Section 42.02(a) contains 'no explicit language' suggesting any legislative intent, much less a clear intent, that the written-approval requirement be jurisdictional."

1. Jurisdictional Prerequisite

***2** Until 2000, Texas law was that "strict compliance with all statutory prerequisites is necessary to vest a trial court with jurisdiction." *Texas Mut. Ins. v. Chicas*, 593 S.W.3d 284, 286 (Tex. 2019) (quoting *Prairie View A&M Univ. v. Chatha*, 381 S.W.3d 500, 510 (Tex. 2012)). But beginning with *Dubai Petroleum Co. v. Kazi*, 12 S.W.3d 71, 76–77 (Tex. 2000), the focus shifted: "The classification of a matter as one of jurisdiction ... opens the way to making judgments vulnerable to delayed attack for a variety of irregularities that perhaps better ought to be sealed in a judgment," and "the modern direction of policy is to reduce the vulnerability of final judgments to attack on the ground that the tribunal lacked subject matter jurisdiction." *In re United Servs. Auto. Ass'n*, 307 S.W.3d 299, 306 (Tex. 2010) (orig. proceeding) (quoting *Dubai*, 12 S.W.3d at 76); *see also Chicas*, 593 S.W.3d at 286 ("We see no reason that this focus should also not apply to judicial appeals from administrative rulings."). Thus, "the focus post-*Dubai* is to strengthen the finality of judgments and reduce the possibility of delayed attacks." *Chicas*, 593 S.W.3d at 286.

Notwithstanding this shift in focus, the Landfill argues that Section 42.02(a)'s requirement is jurisdictional under *Appraisal Review Board v. International Church of Foursquare Gospel*, 719 S.W.2d 160, 161 (Tex. 1986) (per curiam), and that *Foursquare Gospel*'s holding was reaffirmed by *Matagorda County Appraisal District v. Coastal Liquids Partners, L.P.*, 165 S.W.3d 329, 331 n.5 (Tex. 2005), and *Cameron Appraisal District v. Rourk*, 194 S.W.3d 501, 502–03 (Tex. 2006) (per curiam). *Foursquare Gospel*'s holding, however, is narrower than the Landfill asserts and does not control here. The *Foursquare Gospel* Court concluded that a *taxpayer's* compliance with a requirement from *another statutory provision*—"to include the ... Appraisal District as a party within 45 days after receiving notice that a final order had been entered"—was jurisdictional. 719 S.W.2d at 161. The *Foursquare Gospel* Court neither addressed the statutory requirements for a chief appraiser—rather than a taxpayer—to appeal nor considered whether the written approval requirement is jurisdictional. Twenty years later, in a footnote aside, the *Matagorda* Court broadly stated, "While we held twenty years ago that compliance with the statutory requirements for appeal from an appraisal review is jurisdictional, we have yet to address whether that holding survives *Dubai*[.]" 165 S.W.3d at 331 n.5 (citation omitted). And in an unremarkable statement regarding exhaustion of administrative remedies, the *Rourk* Court noted, "[W]e have repeatedly held that 'a taxpayer's failure to pursue an appraisal review board proceeding deprives the courts of jurisdiction to decide most matters relating to ad valorem taxes.' " 194 S.W.3d at 502 (quoting *Matagorda*, 165 S.W.3d at 331). *Matagorda* and *Rourk* did not speak to Section 42.02(a)'s requirement, and to the extent that they could be construed as implying that *Foursquare Gospel*'s holding should be extended to *any* and *all* statutory requirements—including those for a chief appraiser and not just the taxpayer—for an appeal from an appraisal review order, those statements are non-binding obiter dicta. *See Seger v. Yorkshire Ins.*, 503 S.W.3d 388, 399 (Tex. 2016) ("Obiter dictum is not binding as precedent."). Because there is no controlling precedent as to whether Section 42.02(a)'s written approval requirement for the chief appraiser to appeal is jurisdictional, we apply the post-*Dubai* standard in considering whether the requirement is jurisdictional. *See Mosley v. Texas Health & Human Servs.*

Comm'n, 593 S.W.3d 250, 261 n.3 (Tex. 2019) ("[W]e emphasize that *Dubai* and its progeny remain the standard for prospective decisions concerning whether a statutory prerequisite to maintaining a cause of action is mandatory or jurisdictional.").

***3** We begin with the presumption that the Legislature did not intend to make the Section 42.02(a)'s requirement jurisdictional; "a presumption overcome only by clear legislative intent to the contrary." *City of DeSoto v. White*, 288 S.W.3d 389, 394 (Tex. 2009); *see also Crosstex Energy Servs., L.P. v. Pro Plus, Inc.*, 430 S.W.3d 384, 391 (Tex. 2014) ("We resist classifying a provision as jurisdictional absent clear legislative intent to that effect."). To ascertain clear legislative intent that a statutory requirement be jurisdictional, we examine the statute's plain language and apply statutory interpretation principles, considering the specified consequences for noncompliance, the purpose of the statute, and the consequences of alternative constructions. *See Chicas*, 593 S.W.3d at 287.

Considering the plain language first, we note that the Legislature knows how to use unequivocal language to make statutory requirements jurisdictional, *see, e.g.*, Tex. Nat. Res. Code § 33.171(d) (providing that "notice requirement" "is a jurisdictional prerequisite to the institution of suit"), but Section 42.02(a) lacks such unequivocal language, *see* Tex. Tax Code § 42.02(a); *Texas Mut. Ins. v. Ruttiger*, 381 S.W.3d 430, 453 (Tex. 2012) ("We presume the silence is a careful, purposeful, and deliberate choice."). The Legislature has also straightforwardly mandated that "[s]tatutory prerequisites to a suit, including the provision of notice, are jurisdictional requirements in all suits against a governmental entity." Tex. Gov't Code § 311.034; *see Chatha*, 381 S.W.3d at 515 (noting "straightforward mandate that in suits against the government, statutory prerequisites are jurisdictional"). But because a Section 42.02(a) appeal is generally against a private property owner—e.g., the Landfill—the statutory requirement does not implicate the Legislature's "straightforward mandate." The Landfill argues that the phrase "is entitled to appeal" creates the very right to appeal and therefore is jurisdictional in nature. *See* Tex. Gov't Code § 311.016(4) (" 'Is entitled to' creates or recognizes a right.").[1] But "[a]lthough the plain meaning might suggest a jurisdictional bar," we cannot conclude that Section 42.02(a)'s language "meet[s] the requisite level of clarity to establish the statute as jurisdictional," especially when other statutory interpretation principles are considered. *See Crosstex Energy*, 430 S.W.3d at 392 (construing requirement to file certificate of merit with complaint as nonjurisdictional); *cf. In re Department of Fam. & Protective Servs.*, 273 S.W.3d 637, 642 (Tex. 2009) (orig. proceeding) (concluding that "nothing in the language" indicates that "deadlines are jurisdictional," including such language as trial court "shall dismiss the suit" and "may not retain the suit on the court's docket" when deadlines expire).

Turning to the second consideration, Section 42.02 does not contain specific consequences for noncompliance. "[W]hen a statute does not require dismissal for failure to comply, this weighs in favor of a finding that it is not jurisdictional." *Chicas*, 593 S.W.3d at 289 (citing *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 495 (Tex. 2001)). The cases relying on this principle generally have been considering requirements with a specified deadline, unlike the requirement here. *See, e.g., id.* at 288 (considering 45-day deadline for filing suit); *Helena Chem.*, 47 S.W.3d at 494 (considering requirement that complaint be filed within "time necessary to permit effective inspection"). But to the extent this consideration has any weight here, it weighs in favor of concluding that the requirement is nonjurisdictional.

***4** As to the third consideration, the Legislature did not declare the statute's purpose, which generally means this "factor provides little assistance." *See Crosstex Energy*, 430 S.W.3d at 392. Both parties, however, acknowledge that the purpose is to make boards of directors "gatekeepers" to Section 42.02(a) appeals. This purpose is not necessarily frustrated by construing the requirement as nonjurisdictional. The boards may still act as "gatekeepers" when a chief appraiser's compliance is properly challenged, and the failure to comply with obtaining written approval may still result in the loss of the appeal. *See Helena Chem.*, 47 S.W.3d at 496 (noting that construing timing requirement as nonjurisdictional does not thwart purpose of providing for investigation because board can conduct investigation despite delay); *see also White*, 288 S.W.3d at 393 (noting that failure to comply with nonjurisdictional requirement may result in loss of claim); *Hines v. Hash*, 843 S.W.2d 464, 469 (Tex. 1992) (holding that failure to perform while suit is abated for that purpose may result in dismissal). Thus, to the extent the third consideration has any weight here, it weighs in favor of concluding that the requirement is nonjurisdictional.

Finally, we consider the consequences of alternative interpretations. If Section 42.02(a)'s written approval requirement were jurisdictional and a chief appraiser successfully pursued an appeal to a final judgment but did not timely get approval, *see* Tex. Tax Code § 42.06(a) (requiring notice of appeal to be filed within fifteen days after receiving notice that order has been issued), or relied on approval that was later determined to be defective—as may be the case here—that judgment would be vulnerable to collateral attack in perpetuity, *cf. Crosstex Energy*, 430 S.W.3d at 392–93 (noting that if certificate of merit

requirement were jurisdictional, judgment would be vulnerable to collateral attack and that "statute acts as a procedural bar for claims without a certificate of merit" but that "[i]t does not follow that because the Legislature created this procedural bar, it also wanted to create a basis for attacking the judgment in perpetuity"); *Dubai*, 12 S.W.3d at 76 ("When, as here, it is difficult to tell whether or not the parties have satisfied the requisites of a particular statute, it seems perverse to treat a judgment as perpetually void merely because the court or the parties made a good-faith mistake in interpreting the law."). On the other hand, as we have already noted, the purpose of the requirement (as described by the parties) would not be frustrated by construing the requirement as nonjurisdictional, and the Landfill has not identified any other negative consequences for such a construction. Accordingly, this last consideration weighs in favor of construing Section 42.02(a)'s requirement as nonjurisdictional.

Weighing these considerations, we conclude that Section 42.02(a)'s written approval requirement is not jurisdictional.

2. **Proper Remedy**

TCAD argues that if we conclude that Section 42.02(a)'s written approval requirement is not jurisdictional, then we must determine if the 2017 general resolution satisfied the requirement and if it did not, what the proper remedy is for the failure to comply, citing *White*, 288 S.W.3d at 398 ("Having determined that the notice provision is not jurisdictional, we must determine the proper remedy, if any, for the City's failure to comply."). But *White* involved a different procedural posture. After receiving a suspension letter from the police department, White had the option of appealing either to the Civil Service Commission or an independent third-party hearing examiner. *Id.* at 391. White elected to appeal to an independent third-party hearing examiner but then argued that the examiner was without jurisdiction to hear his appeal because the suspension letter did not satisfy the requirement to "notify White that an appeal to a hearing examiner would limit his ability to seek further review with a district court judge." *Id.* White filed suit in district court under a statutory provision "permitting judicial review of hearing examiner decision on grounds that the examiner was without jurisdiction." *Id.* at 392 (citing Tex. Loc. Gov't Code § 143.057(j)). The district court granted summary judgment in White's favor, which the City appealed. *Id.* In that procedural posture, the Texas Supreme Court concluded that the notice requirement did not deprive the hearing examiner of jurisdiction, "determine[d] the proper remedy" for failure to comply with the nonjurisdictional statutory requirement, and remanded the case to the district court in the interest of justice "with instructions to remand to the hearing examiner, so that White has an opportunity to make an appellate election with full knowledge of his appellate rights and with knowledge of our guidance in this opinion." *Id.* at 398, 401.

***5** In contrast, the procedural posture here is an appeal from the district court's granting of the Landfill's pleas to the jurisdiction regarding the *district court's* jurisdiction over TCAD's claims. And as an intermediate court and in contrast to the Texas Supreme Court, we are instructed to "hand down a written opinion that is as brief as practicable but that addresses every issue raised *and necessary* to final disposition of the appeal." *Compare* Tex. R. App. P. 47.1 (emphasis added), *with id.* R. 63 ("The Supreme Court will hand down a written opinion in all cases in which it renders a judgment."). Accordingly, we sustain TCAD's first issue to the extent that it asks us to reverse the district court's order granting the Landfill's second plea to the jurisdiction based on the Section 42.02(a) issue.[2]

B. Market Value Claim

In its second issue on appeal, TCAD challenges the district court's dismissal of its market value claim. TCAD initially found the market value of the Landfill's property to be $21,714,939 and appraised the property at $21,230,464 after certain deductions. Because the Landfill withdrew its market value protest, the ARB did not determine market value; instead, the ARB determined that the equal appraisal value of the property is $2,800,000. The chief appraiser then appealed the ARB order determining the Landfill's protest. In such an appeal, "[r]eview is by trial de novo," and "[t]he district court shall try all issues of fact and law raised by the pleadings in the manner applicable to civil suits generally." Tex. Tax Code § 42.23(a); *see also Willacy Cnty. Appraisal Dist. v. Sebastian Cotton & Grain, Ltd.*, 555 S.W.3d 29, 50 (Tex. 2018) ("A trial de novo is '[a] new trial on the entire case—that is, on both questions of fact and issues of law—conducted as if there had been no trial in the first instance.' " (quoting *Trial De Novo*, Black's Law Dictionary (10th ed. 2014))).

***6** As its market value claim, TCAD asserted that "[t]he market value of [the Landfill's] property is greater than the determination of the ARB" and that "[t]he result of the ARB's determination is an appraisal of the subject property below market value[.]" But we do not reach those merit issues. The question before us today is more limited: Does the district court have jurisdiction over TCAD's market value claim? We conclude that it does.

The Landfill raises two arguments for why jurisdiction does not exist over TCAD's market value claim. First, the Landfill argues that the ARB did not determine market value, and therefore an appeal from "an order of the appraisal review board determining ... a taxpayer protest" does not encompass a market value claim if the ARB did not determine market value. But TCAD's market value claim is not challenging the ARB's market value determination; TCAD is challenging the ARB's equal appraisal value determination on the ground that it is below market value. TCAD may or may not be successful on the merits, but the statutory language providing for an appeal from "an order of the appraisal review board determining ... a taxpayer protest" does not preclude such a challenge. *See* Tex. Tax Code § 42.02(a).[3]

Second, the Landfill argues that "TCAD's de novo theory is at odds with the exclusive-remedies scheme established by the Property Tax Code" and that "[p]ermitting a district court to resolve new protest grounds would denigrate the administrative hearing process and the exclusive-remedies scheme established by the Property Tax Code." But the statutory scheme provides that on appeal the district court may "fix the appraised value of property in accordance with the requirements of law if the appraised value is at issue." Tex. Tax Code § 42.24(1); *see also Cherokee Water Co. v. Gregg Cnty. Appraisal Dist.*, 801 S.W.2d 872, 877 (Tex. 1990) ("Given the appeal of the district's appraisal is by trial de novo, the trial court clearly has power to determine market value whether it be higher or lower than the value determined by the appraisal district."). The Landfill quotes our holding that "a trial de novo does not provide the plaintiff with the right to introduce new claims that were not raised and considered by the ARB." *Z Bar A Ranch, LP v. Tax Appraisal Dist. of Bell Cnty.*, No. 03-18-00517-CV, 2020 WL 1932908, at *6 (Tex. App.—Austin Apr. 22, 2020, no pet.) (mem. op.). But *Z Bar* concerned whether the plaintiff taxpayer had exhausted administrative remedies prior to appealing the appraisal review board's order. *Id.* at *6–8. Here, in contrast, TCAD—not the protesting taxpayer—is appealing the ARB order. As our sister court has noted:

> Unlike the property owner, the appraisal district had no prior administrative remedy to exhaust at the ARB stage of the proceedings. As the entity responsible for the initial property valuation, the appraisal district had no right to initiate the protest procedure and no control over what objections would be presented by the property owner to the ARB. Regardless of what issues were presented by the property owner, the appraisal district had no grievance until the ARB altered its determination of the property's market value and appraised value. The statutory procedure for the appraisal district to complain about the ARB's ruling began with its right of "appeal" to the district court for a trial de novo. Thus, because the appraisal district contended that the ARB erred by reducing the property's market value and appraised value, and it followed the statutory procedures for initiating an appeal, it had standing to challenge the ARB's order in accordance with its statutory right to do so. There was no prior administrative procedure available to the appraisal district that it failed to exhaust.

***7** *Harris Cnty. Appraisal Dist. v. Houston 8th Wonder Prop., L.P.*, 395 S.W.3d 245, 251 (Tex. App.—Houston [1st Dist.] 2012, pet. denied). Although the appraisal district in *Houston 8th Wonder* contested the appraisal review board's alteration of *both* the market value and appraised value, here the ARB only determined the equal appraisal value. Nevertheless, in its de novo trial before the district court, TCAD is contesting the ARB's determination of the equal appraisal value as below market value (along with its other claim that the ARB's determination is an unequal appraisal), a grievance that did not emerge until after the ARB had made its determination and for which "[t]here was no prior administrative procedure available to the appraisal district that it failed to exhaust." *Id.*

Accordingly, we conclude that the district court erred in granting the Landfill's plea to the jurisdiction and dismissing TCAD's claim that the ARB's determination of the equal appraisal value is below market value.

III. CONCLUSION

For these reasons, we reverse the district court's judgment and remand for further proceedings consistent with this opinion.

All Citations

Not Reported in S.W. Rptr., 2022 WL 495048

Footnotes

[1] The Landfill cites myriad authorities from our sister courts that have considered jurisdiction over a Section 42.01(a) appeal, *see* Tex. Tax Code § 42.01(a) (stating conditions when "[a] property owner is entitled to appeal"), and argues that Section 42.02(a)'s same "entitled to appeal" language analogously should be considered jurisdictional as well. But in contrast to a Section 42.02(a) appeal, a Section 42.01 appeal is against an appraisal district—a political subdivision of the State with governmental immunity, *id.* § 6.01(c)—and therefore implicates the mandate that such statutory prerequisites be construed as jurisdictional, *see* Tex. Gov't Code § 311.032.

[2] The Landfill also contends that because the 2017 resolution did not satisfy Section 42.02(a)'s requirement, the chief appraiser "lacked authority to file a notice of appeal" in the district court. We construe this argument as a contention that the chief appraiser lacked capacity to appeal the ARB order. *See* Tex. R. Civ. P. 93(1)–(2) (requiring verified plea to challenge when "plaintiff has not legal capacity to sue" or "plaintiff is not entitled to recover in the capacity in which he sues"); *Pike v. Texas EMC Mgmt., LLC*, 610 S.W.3d 763, 779 (Tex. 2020) (holding that question whether claim brought by partner actually belongs to partnership is matter of capacity and noting that "capacity 'is conceived of as a procedural issue dealing with the personal qualifications of a party to litigate' " (quoting *Austin Nursing Ctr. v. Lovato*, 171 S.W.3d 845, 848 (Tex. 2005))). Capacity, however, does not implicate a court's subject matter jurisdiction and may be waived. *Pike*, 610 S.W.3d at 778–79. The defendant has the burden to challenge capacity via verified plea, and if properly challenged, "the trial court should abate the case and give the plaintiff a reasonable time to cure any defect." *Lovato*, 171 S.W.3d at 853 n.7; *cf. Kinder Morgan SACROC, LP v. Scurry County*, 622 S.W.3d 835, 838, 846 (Tex. 2021) (holding that invalidity of legal services contract does not invalidate bona fide attempt to invoke trial court's jurisdiction and noting that "[a] bona fide effort to invoke the trial court's jurisdiction may be defective, but it is not void, and the proceedings cannot be dismissed without affording an opportunity to refile a proper instrument, if necessary"). To the extent that the district court granted the Landfill's second plea to the jurisdiction and dismissed the cause on the ground that the chief appraiser lacked capacity to appeal the ARB order, we conclude that it erred.

[3] We do not address whether TCAD was required to raise the issue before the ARB to preserve it; the Landfill concedes that it "has not raised waiver and the district court did not rely on waiver in dismissing the market-value claim."

End of Document

TAB C

Order Granting Defendant Texas Disposal System Landfill, Inc.'s Plea to The Jurisdiction and Final Judgment, signed February 11, 2020

CAUSE NO. D-1-GN-19-006394

TRAVIS CENTRAL APPRAISAL DISTRICT, BY AND THROUGH MARYA CRIGLER, ACTING IN HER OFFICIAL CAPACITY AS CHIEF APPRAISER OF TRAVIS CENTRAL APPRAISAL DISTRICT,	§	**THE DISTRICT COURT OF**
Plaintiff	§	
vs.	§	**TRAVIS COUNTY, TEXAS**
TEXAS DISPOSAL SYSTEMS LANDFILL, INC.,	§	
Defendant.	§	**200th JUDICIAL DISTRICT**

ORDER GRANTING DEFENDANT TEXAS DISPOSAL SYSTEMS LANDFILL, INC.'S PLEA TO THE JURISDICTION AND FINAL JUDGMENT

On February 5, 2020, Defendant's Plea to the Jurisdiction, which was filed with the Court on January 24, 2020, came to be heard. The parties appeared through their respective counsel. After considering the plea, response, argument of counsel, and legal authority, the Court finds the plea is meritorious and should be granted.

IT IS THEREFORE ORDERED, the Defendant's Plea to Jurisdiction, filed on January 24, 2020, is **GRANTED**.

Prior to the hearing on Defendant's Plea to the Jurisdiction on February 5, 2020, this Court, on December18, 2019, dismissed the only other cause of action in this lawsuit on a separate and earlier filed Plea to the Jurisdiction.

IT IS THEREFORE **ORDERED** that this is a **FINAL JUDGMENT** that disposes of all parties and all claims and is appealable.

11th Feb 2020
DATED

PRESIDING DISTRICT COURT JUDGE

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Michelle Wenckens on behalf of Mark Trachtenberg
Bar No. 24008169
michelle.wenckens@haynesboone.com
Envelope ID: 72043185
Status as of 1/23/2023 1:36 PM CST

Associated Case Party: Texas Disposal Systems Landfill, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Melanie Plowman		mplowman@adjtlaw.com	1/23/2023 1:27:46 PM	SENT
Lorri Michel	14009460	lorri@michelgray.com	1/23/2023 1:27:46 PM	SENT
Shane Rogers		shane@michelgray.com	1/23/2023 1:27:46 PM	SENT
Alexandra WilsonAlbright		aalbright@adjtlaw.com	1/23/2023 1:27:46 PM	SENT
Wallace B.Jefferson		wjefferson@adjtlaw.com	1/23/2023 1:27:46 PM	SENT

Associated Case Party: Texas Public Policy Foundation

Name	BarNumber	Email	TimestampSubmitted	Status
Yvonne Simental		ysimental@texaspolicy.com	1/23/2023 1:27:46 PM	SENT
Autumn HamitPatterson		apatterson@texaspolicy.com	1/23/2023 1:27:46 PM	SENT
Robert Henneke		rhenneke@texaspolicy.com	1/23/2023 1:27:46 PM	SENT
Chance DWeldon		cweldon@texaspolicy.com	1/23/2023 1:27:46 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Daniel Smith		daniel.smith@property-tax.com	1/23/2023 1:27:46 PM	SENT
Shannon Jones		shannon.jones@ryanlawyers.com	1/23/2023 1:27:46 PM	SENT
Jeff Nanson		jeff.nanson@ryanlawyers.com	1/23/2023 1:27:46 PM	SENT
Janine Luirette		Janine.luirette@ryanlawyers.com	1/23/2023 1:27:46 PM	SENT
Dallas-Office Filings		dallasofficefilings@ryanlawyers.com	1/23/2023 1:27:46 PM	SENT
David Hugin		david.hugin@ryanlawyers.com	1/23/2023 1:27:46 PM	SENT

Associated Case Party: Travis Central Appraisal District

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Mark Ryan Trachtenberg	24008169	mark.trachtenberg@haynesboone.com	1/23/2023 1:27:46 PM	SENT
Mary Sanchez	17570830	mary@texESlaw.com	1/23/2023 1:27:46 PM	SENT
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Michelle Wenckens		michelle.wenckens@haynesboone.com	1/23/2023 1:27:46 PM	SENT

Associated Case Party: Texas Taxpayers and Research Association

Name	BarNumber	Email	TimestampSubmitted	Status
George S.Christian		george@georgechristia.com	1/23/2023 1:27:46 PM	SENT

Associated Case Party: Senator Paul Bettencourt

Name	BarNumber	Email	TimestampSubmitted	Status
Sonya L. Aston		Sonya.aston@senate.texas.gov	1/23/2023 1:27:46 PM	SENT

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Name	BarNumber	Email	TimestampSubmitted	Status
Sandy hoy		sandy@taa.org	1/23/2023 1:27:46 PM	SENT