

# Case Illustrates Important Rule When Protesting Property Taxes

Posted on [August 26, 2019](#) by [tiffany.dowell](#)

In March of this year, the First Court of Appeals in Houston issued an opinion in *Grimes County Appraisal District v. Harvey*, which is a good illustration of an important legal requirement for persons protesting actions of an appraisal district related to property taxes.



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## **Background**

James Harvey owns 91 acres in Grimes County. For the 2015 tax year, the property received agricultural use valuation and the tax bill was \$138.13, which Mr. Harvey paid. In early 2016, the Grimes County Appraisal District (GCAD) sought a re-application from Mr. Harvey because it appeared that his land was no longer being used for agricultural purposes. Mr. Harvey filed an application to keep receiving the open-space valuation, which was denied by the GCAD. His 2016 taxes, based upon fair market value, were \$8,855.16.

Harvey filed a protest with the GCAD. He admits that he did not make any tax payment for the property by February 1, 2017.

The Appraisal Review Board scheduled a hearing, but before any evidence was received, dismissed the protest for lack of jurisdiction based on Harvey's failure to pay any taxes by the February 1, 2017 delinquency deadline. Harvey filed suit in district court challenging the GCAD's denial of his agricultural use valuation. GCAD responded seeking to dismiss the lawsuit because Harvey failed to pay any tax payment by February 1, 2017. The trial court denied GCAD's motion to dismiss. GCAD appealed.

## **Applicable Law**

Texas Tax Code Section 42.08 provides that "the pendency of an appeal...does not affect the delinquency date for the taxes on the property subject to the appeal." Before the delinquency date of the property owner must pay taxes on the subject property, calculated as follows: The amount of taxes the owner must pay is the lesser of: (1) the amount of taxes due on the portion of the taxable value of the property that is not in dispute; (2) the amount of taxes due on the property under the order from which the appeal is taken; or (3) the amount of taxes imposed on the property in the preceding tax year. Failure to make this payment by the delinquency date results in the property owner foregoing the right to proceed to a final determination of the appeal. Unless certain exceptions apply, the statutory delinquency date for payment of property taxes is February 1. *See* Texas Tax Code Section 31.02(a).

## **Appellate Court Opinion**

The Court of Appeals reversed the trial court and dismissed the case due to lack of subject matter jurisdiction. [Read Opinion [here](#).]

Compliance with the payment deadline of Texas Tax Code Section 42.08 “is a jurisdictional prerequisite to the district court’s subject matter jurisdiction to determine a property owner’s rights.” Here, it is undisputed that Harvey did not make any tax payment before February 1, 2017. Thus, per the Tax Code, the court did not have the jurisdiction to hear his case.

Harvey argued that his payment of \$0 complies with option (1) under Section 42.08 because there was no way to know what portion of the taxes were not in dispute until the determination on the agricultural use valuation had been finalized. The court disagreed. Harvey had paid taxes based on agricultural use valuation for several years, with recent tax bills being between \$100-\$200. The 2015 tax bill was \$138.13. Thus, there was at least some amount of taxes not in dispute and Harvey could have paid an estimate of the amount that would have been due had he continued to receive the ag use valuation as sought by his protest.

Next, Harvey argued that by scheduling a hearing and processing his protest, the ARB conferred jurisdiction on the court to hear Harvey’s challenge. Here, the ARB concluded the hearing before any evidence was presented, and issued an order not on the merits of the protest, but instead because it found that it had no jurisdiction to hear the case due to Harvey’s failure to pay the undisputed tax amount. Had the ARB heard the evidence and issued a ruling on the merits of the protest, the court may have found the board did confer jurisdiction on Harvey despite his failure to pay, but those were simply not the facts here.

Lastly, Harvey claimed that he was denied due process because he was not allowed to present evidence at the ARB hearing before his protest was dismissed. The court pointed out that the reason he was not allowed to present evidence was because he failed to timely submit his undisputed payment amount, which waived his right to do so. A procedural process was in place to allow a protest to be pursued, but Harvey failed to abide by the process, thereby waiving his opportunity to protest.

To date, no appeal has been filed.

### **Key Takeaways**

This case is an important reminder to be aware of and follow any deadlines related to property taxes. For example, the deadline to apply for special use valuation like open-space or wildlife valuation is before May 1. The deadline for protesting a Notice of Appraised Value in most cases is May 15 or 30 days after the Notice is received. As this case illustrates, the deadline to pay at least the undisputed tax amount is February 1. The consequences from failing to satisfy these types of deadlines can be a significant increase in taxes or, as we saw here, the loss of the right to protest or appeal a determination the landowner may not agree with.