

**Affirmed and Memorandum Opinion filed June 3, 2010.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-09-00006-CV**

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**HOTEL CORPORATION INTERNATIONAL, Appellant**

**V.**

**HARRIS COUNTY APPRAISAL DISTRICT, Appellee**

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**On Appeal from the 152nd District Court  
Harris County, Texas  
Trial Court Cause No. 2007-76096**

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**MEMORANDUM OPINION**

In this case arising from 2006 tax appraisals of real property and business personal property, appellant Hotel Corporation International (“Hotel Corp.”) appeals from the district court’s order dismissing its suit against appellee Harris County Appraisal District (“HCAD”). We conclude that Hotel Corp.’s failure to pay property taxes before the statutory delinquency date resulted in a forfeiture of its right to a final determination of its appeals. We therefore affirm.

## I. BACKGROUND

The underlying tax dispute involves both real property and business personal property. The real property is known as the Days Inn Greenspoint and is located at 12500 North Freeway, Houston, Texas. The taxable business personal property, also owned by Hotel Corp., is located at the same address.

In the 2006 tax year, HCAD appraised the value of the real property at \$3,403,000, and valued the business personal property at \$166,646. Hotel Corp. filed protests to both valuations but then failed to appear at scheduled hearings. The record does not reflect Hotel Corp. paid any portion of its property taxes by February 1, 2007, the “delinquency date” for the payment of 2006 taxes.

Instead, appellant requested “correction” of both appraisals. As to the real property, however, Hotel Corp. again failed to show for the hearing on its request for a correction. It did appear at the correction hearing as to the business personal property, and HCAD in fact reduced the appraised value to \$88,000, roughly half of the original assessment.

Hotel Corp. sued HCAD in district court, requesting (1) a declaration the real property be valued at not more than \$1,833,354 and the business personal property, not more than \$40,000, (2) an order compelling administrative hearings, and (3) damages and attorney’s fees.<sup>1</sup> HCAD responded with a general denial and subsequently filed a plea to the jurisdiction and motion for dismissal. It argued Hotel Corp. was “not entitled to any of the relief sought because it (a) failed to exhaust the administrative remedies, (b) failed to comply with timely tax payment requirements, and (c) prematurely filed this suit as it

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<sup>1</sup> In its original petition, Hotel Corp. named only HCAD as a defendant and sought only declaratory judgment on the appraised value of the property. In its first amended original petition, Hotel Corp. added HCAD’s Appraisal Review Board as a defendant and added a claim based on alleged denial of hearings under Property Tax Code section 41.45(f). *See* Tex. Tax Code Ann. § 41.45(f) (Vernon Supp. 2009). According to HCAD, the Appraisal Review Board was not served and is not a party to the present appeal.

pertains to the correction order on the business personal property.” The district court granted HCAD’s plea and motion and dismissed the cause against HCAD.

## II. DISCUSSION

In its sole issue on appeal, Hotel Corp. contends the trial court had jurisdiction under section 41.45(f) of the Texas Property Code because appellant timely protested the appraisals and requested correction of the estimated values. HCAD responds with the three arguments it presented in its plea and motion in the trial court, relying first on its argument that Hotel Corp. forfeited all its claims because it did not pay any taxes on the real property or business personal property before the delinquency date.

After setting forth the standard of review, we consider the ramifications of Hotel Corp.’s not having paid any property taxes before the delinquency date. We then consider Hotel Corp.’s argument that, under section 41.45(f), it was entitled to bring suit in district court to obtain an order compelling the appraisal board to hold hearings.

### A. *Standard of Review*

This court reviews a trial court’s ruling on a plea to the jurisdiction *de novo*. *Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 228 (Tex. 2004). A defendant’s jurisdictional plea may challenge either the plaintiff’s pleadings or the existence of jurisdictional facts. *See id.* at 226–28. When, as here, the defendant challenges the existence of jurisdictional facts, the court must consider the relevant evidence submitted by the parties. *See id.* at 227. If that evidence raises a fact issue as to jurisdiction, the court must deny the defendant’s plea because the trier of fact must resolve the issue. *See id.* at 227–28. However, if the relevant evidence is undisputed or fails to present a jurisdictional fact issue, the court should grant the plea as a matter of law. *Id.* at 228. In reviewing the evidence, this court must assume the truth of all evidence favoring the nonmovant, in this case, Hotel Corp. *See id.*

## ***B. Application of the Texas Property Tax Code***

The Property Tax Code provides detailed administrative procedures for property owners who contest their property taxes. *Cameron Appraisal Dist. v. Rourk*, 194 S.W.3d 501, 502 (Tex. 2006). These remedial procedures are, with a few exceptions, exclusive and jurisdictional. *See id.*; *see also* Tex. Tax Code Ann. § 42.09(a) (Vernon 2008).

Property Tax Code section 42.01 grants property owners a right to judicial review of an appraisal review board's decisions. That section provides in relevant part: "A property owner is entitled to appeal . . . an order of the appraisal review board determining: (A) a protest by the property owner as provided by Subchapter C of Chapter 41; or (B) a determination of an appraisal review board on a motion filed under Section 25.25." Tex. Tax Code Ann. § 42.01(1) (Vernon 2008).<sup>2</sup> Thus, authorization for judicial review of the appraisal board's decisions on both protests and correction motions is found in chapter 42. To be entitled to, and to exercise, the right of appeal from determinations of valuation, property owners must follow the procedures prescribed by the Property Tax Code because those procedures are the exclusive means for judicial review. *Ferguson v. Chillicothe Indep. Sch. Dist.*, 798 S.W.2d 395, 397 (Tex. App.—Amarillo 1990, writ denied).

**No timely payment.** Under chapter 42, a property owner forfeits its right to judicial review by not timely paying at least a portion of its taxes. Property Tax Code section 42.08(b) provides that, with an exception not applicable here, "a property owner who appeals as provided by this chapter must pay taxes on the property subject to the appeal in the amount required by this subsection before the delinquency date or the property owner forfeits the right to proceed to a final determination of the appeal." Tex. Tax Code Ann. § 42.08(b) (Vernon Supp. 2009). To comply, the property owner must

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<sup>2</sup> Additionally, Property Tax Code section 25.25(g) grants a property owner the right to sue in district court: "Within 45 days after receiving notice of the appraisal review board's determination of a motion under this section, the property owner or the chief appraiser may file suit to compel the board to order a change in the appraisal roll as required by this section." Tex. Tax Code Ann. § 25.25(g) (Vernon 2008).

pay “the lesser of (1) the amount of taxes due on the portion of the taxable value of the property that is not in dispute; or (2) the amount of taxes due on the property under the order from which the appeal is taken.” *Id.*

The delinquency date for 2006 property taxes was February 1, 2007. *See id.* § 31.02(a) (Vernon 2008). Hotel Corp. does not contend it paid any taxes on either the real property or the business personal property before that date. Instead, the earliest tax receipts appearing in the record reflect payment of real property taxes in June and July 2007 and payment of business personal property taxes in July 2007. Thus, under the governing statute, Hotel Corp. forfeited its right to final determination of its appeal, and the district court correctly dismissed Hotel Corp.’s causes of action. *See Gen. Motors Acceptance Corp. v. Harris County Mun. Util. Dist. # 130*, 899 S.W.2d 821, 824 (Tex. App.—Houston [14th Dist.] 1995, no writ) (interpreting prior version of section 42.08 and stating, “Because GMAC failed to follow the administrative procedures of section 42.08 [i.e., pay required taxes before delinquency date], the trial court properly dismissed appellant’s cause of action.”);<sup>3</sup> *Eggert v. Comanche Cent. Appraisal Dist.*, No. 11-05-00416-CV, 2007 WL 3026716, at \*3 (Tex. App.—Eastland Oct. 18, 2007, no pet.) (per curiam) (mem. op.) (holding property owner did not substantially comply with section 42.08 provisions because she paid no taxes before delinquency date; accordingly, trial court did not err in dismissing appeal for lack of jurisdiction).<sup>4</sup>

**Right to a hearing under section 41.15.** Hotel Corp. does not address the ramifications of its not having paid any taxes by the delinquency date. Instead, it complains that, with regard to its two protests and one of its motions for correction, the

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<sup>3</sup> In *General Motors Acceptance Corp.*, the utility district filed only a motion to dismiss and not a plea to the jurisdiction. *See Gen. Motors Acceptance Corp. v. Harris County Mun. Util. Dist. # 130*, 899 S.W.2d 821, 822 (Tex. App.—Houston [14th Dist.] 1995, no writ). This court noted that filing a plea to the jurisdiction “might be a better practice.” *Id.* at 824 n.3.

<sup>4</sup> By not timely paying any taxes, Hotel Corp. also forfeited its right to final administrative determination of its motions for correction. *See* Tex. Tax Code Ann. § 25.25(e) (Vernon 2008) (“A property owner who files the motion must comply with the payment requirements of Section 42.08 or forfeit the right to a final determination of the motion.”).

appraisal review board dismissed without holding a hearing. In arguing the trial court should have compelled the board to hold hearings, Hotel Corp. relies on Property Tax Code section 41.45(f), which provides:

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

Tex. Tax Code Ann. § 41.45(f) (Vernon Supp. 2009). We decline to adopt Hotel Corp.’s section 41.45(f) argument for two reasons.

First, section 41.45(f) applies when a property owner “has been denied a hearing.” The record in the present case, however, indicates the appraisal review board scheduled hearings, but Hotel Corp. did not appear. The board did not deny Hotel Corp. a hearing. Thus, on its face, section 41.45(f) is inapplicable to the procedural facts here, and Hotel Corp. cites no authority suggesting an appraisal board must continue to endlessly schedule protest hearings despite the owner’s failure to attend.

Second, this court has previously rejected a party’s reliance on section 41.45(f) as a means of creating a new avenue of judicial appeal in tax protest cases. *See Appraisal Review Bd. of Harris County Appraisal Dist. v. O’Connor & Assocs.*, 267 S.W.3d 413, 417–18 (Tex. App.—Houston [14th Dist.] 2008, no pet.); *Appraisal Review Bd. of Harris County Appraisal Dist. v. Spencer Square Ltd.*, 252 S.W.3d 842, 844–45 (Tex. App.—Houston [14th Dist.] 2008, no pet.). In *O’Connor*, the property owners filed suit in district court alleging various taxing entities were violating procedures outlined in the Property Tax Code for conducting property tax appraisal protest hearings. *O’Connor*, 267 S.W.3d at 415. They sought mandamus, injunctive, and declaratory relief. *Id.* The taxing entities filed a plea to the jurisdiction, and the trial court ultimately denied the plea in relation to two of the entities, who then appealed. *Id.* at 416.

In this court the property owners argued, *inter alia*, that (1) “even though they did not complete the administrative process, the district court still [had] subject matter jurisdiction to hear their claims because . . . section 41.45(f) of the Tax Code allows the district court to compel the Board to hold a hearing”; and (2) “because the Board [was] failing to conduct hearings in accordance with the procedures outlined in the Tax Code, section 41.45(f) [gave] the district court jurisdiction over their claims.” *Id.* at 417. This court responded:

Adopting the Taxpayers’ interpretation of section 41.45(f) would allow property owners to circumvent the appeal provisions in chapter 42 and sue in district court simply by alleging the Board failed to adhere to procedural guidelines. Interpreting section 41.45(f) as creating another avenue of appeal to the district court would essentially render the appeal provisions in chapter 42 meaningless.

*Id.* at 418.

In *Spencer Square*, the board did conduct a hearing on the property owner’s protest and issued a written order reducing the property’s appraised value. *Spencer Square*, 252 S.W.3d at 843. The property owner did not file a petition for review of the order. *Id.* Subsequently, however, the owner filed suit in district court, alleging the board failed to comply with procedural guidelines outlined in the Tax Code. *Id.* The owner sought a writ of mandamus pursuant to section 41.45(f) compelling the board to conduct a second hearing. *Id.* at 843–44. The board filed a plea to the jurisdiction, arguing the trial court lacked jurisdiction under section 41.45(f) because the board had conducted a hearing. *See id.* at 844. The owner contended the trial court had jurisdiction under section 41.45(f) because it merely sought the hearing to which it was entitled. *Id.*

This court held the trial court erred by denying the board’s plea to the jurisdiction. *See id.* at 844–46. We stated section 41.45(f) grants district courts jurisdiction to compel an appraisal review board to conduct a hearing if it denied a hearing after the property owner filed a notice of protest complying with the Tax Code. *Id.* at 845. We also

observed that a petition for judicial review under chapter 42 is the process the Property Tax Code prescribes for an owner to appeal an appraisal board's order and to complain about procedural errors the board committed. *Id.* The property owner, however, had not timely filed a petition for judicial review. *See id.* at 843, 845. We concluded section 41.45(f) did not provide an additional avenue for attacking the board's order and could not be used to circumvent the appeal process prescribed by chapter 42. *Id.* at 845. We therefore held the trial court lacked jurisdiction under section 41.45(f) to order a second board hearing. *Id.*

In *O'Connor*, the property owners attempted to circumvent the chapter 42 appeal process by going directly to district court without filing a protest with the board. In *Spencer Square*, the property owner attempted to circumvent the chapter 42 appeal process by not petitioning the district court for review of the board's order. In the present case, Hotel Corp. attempts to circumvent the chapter 42 process by not appearing at scheduled hearings, having its protests and motion for correction dismissed as a result, and then complaining it was "denied" a hearing. As in *O'Connor* and *Spencer Square*, we decline to adopt the property owner's interpretation to provide an additional avenue for attacking the board's action.

For the preceding reasons, we overrule Hotel Corp.'s single issue. We therefore affirm the order of the trial court.

/s/     Kent C. Sullivan  
          Justice

Panel consists of Justices Frost, Boyce, and Sullivan.