

STATE OF MICHIGAN
IN THE SUPREME COURT

TOLL NORTHVILLE LIMITED
PARTNERSHIP, a Michigan Limited
Partnership; and BILTMORE
WINEMAN, LLC, a Michigan
Limited Liability Company,

Plaintiffs-Appellees,

v

TOWNSHIP OF NORTHVILLE,

Defendant-Appellant.

Supreme Court
Docket No. 132466

Court of Appeals
Docket No. 259021

Wayne County Circuit Court
Docket No. 03-326658-CZ

BRIEF OF AMICUS CURIAE, MICHIGAN STATE TAX COMMISSION
IN SUPPORT OF THE TOWNSHIP OF NORTHVILLE

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Dated: July 19, 2007

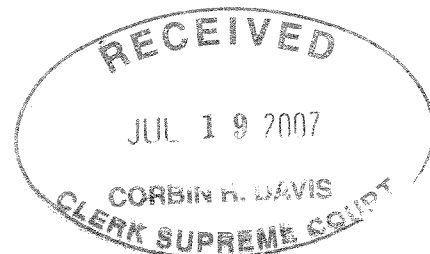


TABLE OF CONTENTS

	<u>Page</u>
INDEX OF AUTHORITIES.....	ii
QUESTION PRESENTED FOR REVIEW	iv
ARGUMENT	1
I. Those sophisticated in the law of property tax administration knew that the definition of "additions," as used in MCL 211.34d prior to the adoption of Proposal A, included construction for public service improvements.	1
A. Standard of Review	1
B. Background of controversy.	1
C. The Court of Appeals erred when it found that: 1) the term "additions," as used in MCL 211.34d, was ambiguous; 2) that the Legislative amendment to MCL 211.34d supported its determination that public service improvements were never included within the definition of "additions"; and, 3) that "additions" only constituted improvements made by the owners of real property.....	4
1. The term "additions," as used in MCL 211.34d, is not ambiguous as its meaning was plainly understood by those sophisticated in the law of property tax administration prior to the adoption of Proposal A in 1994.....	4
2. The Legislature's subsequent amendment of MCL 211.34d, as it relates to the express inclusion of the construction of "public services" within "additions," did not alter the fact that construction for "public services" was always included within the definition of "additions.".....	10
3. Contrary to the holding of the Court of Appeals, "additions" to real property can be made by those other than the owner of the property.	11
CONCLUSION	14
RELIEF SOUGHT	15

INDEX OF AUTHORITIES

	<u>Page</u>
 <u>Cases</u>	
<i>Maiden v Rozwood</i> , 461 Mich 109; 597 NW2d 817 (1999)	1
<i>Mayor of Lansing v Michigan Public Service Commission</i> , 470 Mich 154; 680 NW 2d 840 (2004) (emphasis in original)	10
<i>Michigan Coalition of State Employee Unions v Civil Service Comm</i> , 465 Mich 212; 634 NW2d 692 (2001)	5, 6
<i>Silver Creek Drain District v Extrusions Division, Inc</i> , 468 Mich 367; 663 NW2d 436 (2003) ..	6
<i>Wayne Co v Michigan State Tax Commission</i> , unpublished opinion per curiam of the Court of Appeals, issued April 2, 2002 (Docket No. 227236)	8
<i>Wayne Co v Michigan State Tax Commission</i> , 261 Mich App 174 (2004)	8
<i>Wayne County v Hathcock</i> , 471 Mich 445; 684 NW2d 765 (2004)	1
<i>WPW Acquisition Co v City of Troy</i> , 466 Mich 117; 643 NW2d 564 (2002)	1, 2, 3
<i>Yellow Freight System v Michigan</i> , 464 Mich 21, 31; 627 NW2d 236 (2001), <i>rev on other grounds</i> 537 U.S. 36; 123 S. Ct 371; 154 Led2d 377 (2002)	9
 <u>Statutes</u>	
MCL 211.10c	8
MCL 211.10d	8
MCL 211.10e	8
MCL 211.27(2).....	7
MCL 211.34d(1)(a)	7
MCL 211.34d(1)(b)(vii)	1
MCL 211.34d(1)(b)(viii).....	1
MCL 211.150(2).....	8
MCL 213.55	6
MCL 8.3a	5

Constitutional Provisions

Const 1963, art 9, § 32, 4
Const 1963, art 9, § 317, 13

QUESTION PRESENTED FOR REVIEW

- I. **Prior to the adoption of Proposal A in 1994, those sophisticated in the law of property tax administration accepted the definition of "additions," as used in MCL 211.34d, to include value enhancement to property due to the construction of public services. Subsequent to the adoption of Proposal A, the Legislature amended the definition of "additions" so as to expressly include the construction of public services within the definition of "additions." Was the value enhancement to property due to the construction of public services included in the definition of "additions" prior to the adoption of Proposal A?**

ARGUMENT

I. Those sophisticated in the law of property tax administration knew that the definition of "additions," as used in MCL 211.34d prior to the adoption of Proposal A, included construction for public service improvements.

A. Standard of Review

This Court reviews de novo appeals from decisions on summary disposition,¹ constitutional issues and issues of statutory construction.²

B. Background of controversy.

As correctly noted by the Court of Appeals in its Slip Opinion, this controversy arises out of a dispute regarding the taxable value of certain real property located in the Township of Northville. During the years at issue the Plaintiffs-Appellees developed the property, installing physical improvements including a road, streetlights, sewer service, water service, electrical service, natural gas service, telephone service, and sidewalks. Northville Township assessed the parcels of property at issue for the years at issue, including within the taxable value of the parcels the appreciation in value resulting from the construction of the above.

Plaintiffs-Appellees contested the inclusion of the value of these improvements in the taxable value of the properties, asserting that the statute that purportedly allowed such value inclusion, §34d(1)(b)(viii) of the General Property Tax Act³ (GPTA) was unconstitutional for the same reasons that this Court, in the case of *WPW Acquisition Co v City of Troy*,⁴ ruled that a companion provision, §34d(1)(b)(vii) of the GPTA⁵ was unconstitutional. In *WPW Acquisition*,

¹ *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

² *Wayne County v Hathcock*, 471 Mich 445; 684 NW2d 765 (2004).

³ MCL 211.34d(1)(b)(viii).

⁴ *WPW Acquisition Co v City of Troy*, 466 Mich 117; 643 NW2d 564 (2002)

⁵ MCL 211.34d(1)(b)(vii)

this Court held that the Legislature could not statutorily define "additions" inconsistent with the meaning of that term at the time Proposal A was approved by the electorate.⁶

The gravamen of Plaintiffs-Appellees' case here is similar. They argue that the passage of 1995 PA 415, which added §34d(1)(b)(viii) to the GPTA specifically identified "public services" as an "addition" when, prior to the adoption of Proposal A, the term "additions" did not include such public services.

Proposal A, passed by the electorate on March 14, 1994, amended several provisions of Michigan's Constitution. In regard to the instant case, Proposal A added the following sentence to Const 1963, art 9, § 3:

For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred.

The Legislature, pursuant to the direction noted above, then passed and the Governor signed, 1994 PA 415 with an effective date of December 29, 1994. 1994 PA 415 amended § 34d of the GPTA⁷ and specifically added §§ 34d(1)(b)(viii) and 34d(1)(c) which now provide that:

(1) As used in this section or section 27a, or section 3 or 31 of article IX of the state constitution of 1963:

...

(b) For taxes levied after 1994, "additions" means, except as provided in subdivision (c), all of the following:

...

(viii) Public services. As used in this subparagraph, "public services" means water service, sewer service, a primary access road, natural gas service, electrical service, telephone service, sidewalks, or street lighting. For purposes of determining the taxable value of real property under section 27a, the value of public services is the amount of increase in true cash value of the property attributable to the available public services multiplied by 0.50 and shall be added

⁶ *WPW Acquisition Co v City of Troy*, 466 Mich at 123-124.

⁷ MCL 211.34d

in the calendar year following the calendar year when those public services are initially available.

- (c) For taxes levied after 1994, additions do not include increased value attributable to any of the following:
 - (i) Platting, splits, or combinations of property.
 - (ii) A change in the zoning of property.
 - (iii) For the purposes of the calculation of the millage reduction fraction under subsection (7) only, increased taxable value under section 27a(3) after a transfer of ownership of property.

Prior to the amendment of §34d through the adoption of 1994 PA 415, §34d(1)(a) provided the following definition of "additions":

"Additions" means all increases in value caused by new construction or a physical addition of equipment or furnishings, and the value of property that was exempt from taxes or not included on the assessment unit's immediately preceding year's assessment roll.

Plaintiffs-Appellees initially filed an action in the Michigan Tax Tribunal contesting the assessments on the subject property on constitutional grounds. The Tax Tribunal, after determining that it lacked the requisite jurisdiction to hear the matter, held the cases in abeyance pending a determination of the statute's constitutionality by a circuit court. Plaintiffs-Appellees then filed a declaratory judgment action in circuit court, which ultimately ruled that the statute in question was unconstitutional. This finding was affirmed by the Court of Appeals, which determined that the definition of the term "additions," as set out in §34d pursuant to 1994 PA 415, was inconsistent with the established meaning of that term at the time Proposal A was passed and, pursuant to *WPW Acquisition Co v City of Troy*,⁸ was unconstitutional.

⁸ *WPW Acquisition Co v City of Troy*, 466 Mich 117; 643 NW2d 564 (2002)

- C. **The Court of Appeals erred when it found that: 1) the term "additions," as used in MCL 211.34d, was ambiguous; 2) that the Legislative amendment to MCL 211.34d supported its determination that public service improvements were never included within the definition of "additions"; and, 3) that "additions" only constituted improvements made by the owners of real property.**

Beginning at page 6 of its Opinion of October 3, 2006, the Court of Appeals correctly recognized that the term "additions," as used in Const 1963, art 9, § 3, as amended, was a technical term or phrase of art in the law, and that this term or phrase was to be given the meaning it had to those sophisticated in the law at the time of its adoption. The Court also correctly recognized at page 7 of its Opinion that when Proposal A was adopted § 34d of the GPTA⁹ defined "additions" to mean all increases in value caused by new construction or a physical addition of equipment or furnishings as well as the value of property that was exempt from taxes or not included on the assessment unit's immediately preceding year's assessment roll.

The Court of Appeals erred, however, when it determined that the term "additions" was: 1) ambiguous¹⁰; 2) that the amendment of § 34d subsequent to the passage of Proposal A confirmed its interpretation of the term "additions"¹¹; and 3) that the appropriate amount of "additions" to real property should only take into account improvements that the landowner makes on the land itself.¹²

1. **The term "additions," as used in MCL 211.34d, is not ambiguous as its meaning was plainly understood by those sophisticated in the law of property tax administration prior to the adoption of Proposal A in 1994.**

Here, the Court determined¹³:

⁹ MCL 211.34d

¹⁰ Pg 10 of the Court of Appeals October 3, 2006, slip Opinion.

¹¹ Pg 10 of the slip Opinion.

¹² Page 11 of the slip Opinion.

¹³ Page 10 of the slip Opinion.

The term "additions" is ambiguous. There can be no dispute that, pre-Proposal A, that term was intended to mean "all increases in value caused by new construction or a physical addition of equipment or furnishings." But that definition, taken alone, is ambiguous. As the parties' arguments evidence, reasonable minds could disagree regarding whether certain improvements constructed on or physically connected to property, and which increase the value of that property, constitute taxable "additions."

In holding that the term "additions" was ambiguous, the Court failed to consider several important factors.

In *Michigan Coalition of State Employee Unions v Civil Service Comm*¹⁴ this Court noted that when analyzing constitutional language, the first inquiry is to determine if the words have a plain meaning or are obvious on their face. If they are, that plain meaning is the meaning given them. If, however, the constitutional language has no plain meaning, but is a technical, legal term, this Court construes those words in their technical, legal sense. Moreover, in that undertaking, this Court has relied on the understanding of the terms by those sophisticated in the law at the time of the constitutional drafting and ratification. The rule, as this Court noted in *Michigan Coalition*, is that "if a constitutional phrase is a technical legal term or a phrase of art in the law, the phrase will be given the meaning that those sophisticated in the law understood at the time of enactment unless it is clear from the constitutional language that some other meaning was intended."¹⁵ Moreover, this Court also pointed out in *Michigan Coalition* that the same rule, pursuant to the Legislature's directive at MCL 8.3a, applies to the construction of a statute.¹⁶ MCL 8.3a provides: "All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may

¹⁴ *Michigan Coalition of State Employee Unions v Civil Service Comm*, 465 Mich 212, 222-223; 634 NW2d 692 (2001)

¹⁵ *Michigan Coalition*, 465 Mich at 223.

¹⁶ *Michigan Coalition*, 465 Mich at 223 n 9.

have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning.”

Two years after deciding *Michigan Coalition* this Court decided *Silver Creek Drain District v Extrusions Division, Inc.*¹⁷ At issue in *Silver Creek* was the meaning of the term “just compensation” as used by the Legislature in MCL 213.55 of the Uniform Condemnation Procedures Act. In analyzing this term this Court said¹⁸:

The meaning of “just compensation” cannot be discerned merely by a careful reading of the phrase. The words themselves, as the Court of Appeals found, just do not inform a court about the potential complexity and variety of factors to be considered in determining value. This circumstance is not unusual in the realm of statutory construction. For example, it can be seen also when statutes, as they occasionally do, use words such as “negligence,” “due process,” or “equity.” These are words with meanings that are not generally self-evident from a mere reading of the words or an assessment of their definitions in a dictionary. They are, in this respect, unlike self-evident words such as “bridge,” “road,” “building,” or “horse.” Rather, they are words that fall into that category we have described as technical legal terms or phrases of art in the law, and thus they are to be given the meaning that those sophisticated in the law gave them at the time of enactment. We believe it is necessary, if the law is to be applied uniformly across the state, that this class of words--words that are freighted with historic meaning--be given the same legal meaning in all our courts rather than allowing each court to impose its own meaning.

The same analysis should apply to this case inasmuch as the meaning of the term “additions” as used by those sophisticated in the law of property tax administration in Michigan, was firmly established years prior to the adoption of Proposal A in 1994.

As correctly noted by the Township of Northville, the use of the term “additions” was first used in the GPTA as a result of the passage of the Headlee Amendment to Michigan's Constitution in 1978.¹⁹ Prior to that constitutional amendment, there was no need or requirement

¹⁷ *Silver Creek Drain District v Extrusions Division, Inc.*, 468 Mich 367; 663 NW2d 436 (2003).

¹⁸ *Silver Creek*, 468 Mich at 375-376.

¹⁹ Section 34d of the General Property Tax Act (GPTA), MCL 211.34d, was added pursuant to 1978 PA 532, effective after the passage of the Headlee Amendment on November 7, 1978.

for any general differential treatment to be afforded increases in property value from year to year due to new construction or the addition of equipment or furnishings.²⁰

Subsequent to the passage of the Headlee Amendment, there was a need to distinguish and account for the difference in the value of property located in local units of government before and after new construction and improvements. One of the constitutional provisions added by the Headlee Amendment provides, in part, as follows²¹:

If the assessed valuation of property as finally equalized, excluding the value of new construction and improvements, increases by a larger percentage than the increase in the General Price Level from the previous year, the maximum authorized rate applied thereto in each unit of Local Government shall be reduced to yield the same gross revenue from existing property, adjusted for changes in the General Price Level, as could have been collected at the existing authorized rate on the prior assessed value.

To the extent that the value of property within a local unit of government, adjusted for new construction or improvements, rose by more than the increase in the determined rate of inflation, the Headlee Amendment required a reduction in the rate of taxation (millage levied) so the total amount of taxes collected by that local unit did not rise by more than the rate of inflation. To effectuate this new constitutional limitation on the ability of local governmental units to raise revenue, the Legislature amended the GPTA by adding § 34d through the adoption of 1978 PA 532, which provided the necessary procedures for the calculations to implement the Headlee Amendment. As a necessary part of these procedures, the Legislature indicated that the term "additions" meant as follows²²:

"Additions" means all increases in value caused by new construction, improvements caused by new construction or a physical addition of equipment or

²⁰ There were, and are, specific statutory exclusions for certain repair, replacement and maintenance expenses to residential property in the determination of that property's true cash value. See MCL 211.27(2).

²¹ Const 1963, art 9, § 31

²² MCL 211.34d(1)(a), as added by 1978 PA 532.

furnishings, and the value of property which was exempt from taxes or not included on the assessment unit's previous year's assessment roll.

As correctly noted by the Township of Northville in its brief in support of its application for leave to appeal, the Michigan State Assessors Board, a state agency charged with the training and certification of local assessors²³ has, through the issuance of its Assessor's Training Manual, provided local assessors with instructions regarding the calculation of Headlee Amendment millage reduction fractions.²⁴ The Michigan State Tax Commission, the state agency charged with advising and conferring with local assessing officials,²⁵ as well as the promulgation of the Assessor's Manual,²⁶ has likewise indicated, prior to the adoption of Proposal A, that the value of property subject to tax included value attributable to all types of construction, wherever located, not just construction on the property being valued. The adoption of a definition for "additions," when one had not been previously established was necessary because the purpose and intent of the Headlee Amendment was to limit the growth of local governments and the amendment was designed to implement that Amendment by requiring a reduction in millage rates at the local unit level. The "additions" that were to be considered under the Headlee Amendment were the total increase in value in the local unit. It did not matter which individual property within a local unit had an increase in value due to new construction or the addition of furnishings and equipment—

²³ MCL 211.10c and MCL 211.10d.

²⁴ See instructions for the preparation of form L-4025 used to calculate Headlee millage reduction fractions contained in the 1980 version of the Assessor's Training Manual, attached as Exhibit 1.

²⁵ MCL 211.150(2).

²⁶ Pursuant to MCL 211.10e, the Assessor's Manual is to be used as a "guide" by local assessing officials in performing their official duties. *Wayne Co v Michigan State Tax Commission*, 261 Mich App 174, 179, (2004), quoting from *Wayne Co v Michigan State Tax Commission*, unpublished opinion per curiam of the Court of Appeals, issued April 2, 2002 (Docket No. 227236). A copy of relevant pages from the Assessor's Manual, Volume II, unit-in-place section 16, and Volume III, Chapter 5, pgs 7 & 26, dealing with the inclusion of the value attributable to public services in the assessment of property are attached as Exhibit 2.

it was the impact of that new construction or the addition of furnishings and equipment on the total value of the local unit that mattered. If a new subdivision was created and a developer improved property through the construction of streets, sewers or other types of improvements, the increased value caused by those improvements was an "addition" and was included in the computation of a reduction in millage rates necessitated by the Headlee Amendment.

It is clear that, from the time of the passage of the Headlee Amendment, those sophisticated in the area of property tax law knew what the term "additions" meant as the Legislature had defined the term through the passage of 1978 PA 532 and the definition of the term had been used by those in property tax administration to establish millage rollbacks required by the Headlee Amendment. The term was not ambiguous. It means the same after the passage of Proposal A as it meant before.

A second rationale proposed by the Court of Appeals in support of its determination that the term "additions" is ambiguous is its statement that because the parties to this lawsuit disagree as to the term's meaning it must be ambiguous. Of course, any two litigants may disagree on the import and meaning of any legislative defined term or word. That, in and of itself, does not mean that the defined term or word is ambiguous. Under the Court's rationale, every lawsuit contesting a legislative term or word results in that term or word being ambiguous. Any party to a lawsuit, faced with a definition of a legislative term or word being contrary to its position or desired result, will argue that the opposing side's suggested definition of that term or word is incorrect. That doesn't mean the term or word is ambiguous, just that the parties are vigorously advocating their respective positions.

As noted by this Court in *Yellow Freight System v Michigan*²⁷

²⁷ *Yellow Freight System v Michigan*, 464 Mich 21, 31; 627 NW2d 236 (2001), *rev on other grounds* 537 U.S. 36; 123 S. Ct 371; 154 Led2d 377 (2002).

If the parties' conflicting interpretations were the measure of a statute's ambiguity, then almost every statute litigated would be deemed ambiguous. A statute is not ambiguous because it requires careful attention and analysis.

In a similar vein, as stated by this Court in *Mayor of Lansing, et al, v Michigan Public Service Commission, et al*,²⁸

In peremptorily reaching its conclusion that MCL 247.183 is "ambiguous," the dissent entirely misstates the standard for discerning ambiguity. The dissent would hasten findings of "ambiguity" by courts by predicating these findings on the basis of whether "reasonable minds can differ regarding" the meaning of a statute. *Post* at 3. Especially in the context of the types of cases and controversies considered by this Court--those in which the parties have been the most determined and persistent, the most persuaded by the merits of their own respective arguments--it is extraordinarily difficult to conclude that reasonable minds cannot differ on the correct outcome. That is not, and has never been, the standard either for resolving cases or for ascertaining the existence of an ambiguity in the law. The law is not ambiguous whenever a dissenting (and presumably reasonable) justice would interpret such law in a manner contrary to a majority. Where a majority finds the law to mean one thing and a dissenter finds it to mean another, neither may have concluded that the law is "ambiguous," and their disagreement by itself does not transform that which is unambiguous into that which is ambiguous. Rather, a provision of the law is ambiguous only if it "irreconcilably conflicts" with another provision, *id.* at 467, or when it is *equally* susceptible to more than a single meaning.

Merely because individual disagree on the meaning of a word or phrase does not render that word or phrase "ambiguous."

2. The Legislature's subsequent amendment of MCL 211.34d, as it relates to the express inclusion of the construction of "public services" within "additions," did not alter the fact that construction for "public services" was always included within the definition of "additions."

At page 10 of its slip opinion, the Court of Appeals finds supposed support for its holding that the term "additions" does not include public service improvements in the amendment to § 34d subsequent to the passage of Proposal A. As stated by the Court of Appeals²⁹:

²⁸ *Mayor of Lansing v Michigan Public Service Commission*, 470 Mich 154, 165-166; 680 NW 2d 840 (2004) (emphasis in original)

²⁹ Page 10 of slip Opinion.

That the Legislature found it necessary to set forth a separate category for "public services" leads to the conclusion that public service improvements are not, and never were, understood to fall within the scope of "new construction or a physical addition of equipment or furnishings."

This statement completely ignores the prior understanding of the term "additions" by those sophisticated in property tax law since the adoption of the Headlee Amendment. In amending § 34d, the Legislature, specifically defining "public services," was simply distinguishing infrastructure improvements, which the State Tax Commission and local assessing officials always considered to be "additions" from the platting of new subdivisions, which were an "addition" prior to the adoption of Proposal A but not intended to be an "addition" after the passage of Proposal A.³⁰ The Court simply misconstrued the import of the Legislative action in amending § 34d after the passage of Proposal A.

3. Contrary to the holding of the Court of Appeals, "additions" to real property can be made by those other than the owner of the property.

The Court of Appeals concluded that "'additions' to real property should only take into account improvements that the landowner makes on the land itself."³¹ First, this statement completely disregards the fact that the statutory definition of "additions" does not indicate that it only applies to the property on which the construction or improvement is made, or the fact that it is not only landowners that may make improvements to property, but also non-landowners/lessees. The State Tax Commission submits that the statute does not exclude from the post-Proposal A valuation process new construction or improvements made to real property by lessees. The Court's statement fails to include within its ambit those who improve property

³⁰ As stated by the Township of Northville in its Application For Leave to Appeal, at the very least the question of whether the improvements at issue in this matter were, prior to the passage of Proposal A, considered "additions" by those sophisticated in property tax law is a question of fact that would preclude the granting of the Appellee's motion for summary disposition.

³¹ Page 11 of slip Opinion.

that they do not own. The assessments on property owned by landlords are consistently, and properly, increased due to "additions," for leasehold improvements made by tenants.

Second, this statement again disregards the import of the definition of "additions" required by the adoption of the Headlee Amendment. A purpose of the Headlee Amendment was to limit the growth of revenue for local units of government. The only increases in local revenue that were to be permitted were those increases reflecting inflationary increases, plus those resulting from new property. As noted earlier, the addition of § 31 to article 9 of Michigan's Constitution through the adoption of the Headlee Amendment, resulted in limiting to the rate of inflation (the increase in the General Price Level) the otherwise allowable local revenue increases due to increases in market value, but it allowed local units of government to receive the additional revenue that was the result of new property (the value of new construction or improvements). An increase in the value of property, either collectively or individually, must be due either to a general increase in market values or be due to the existence of new property, including an increase due to property enhancements. Stated another way, an increase in a property's value is attributable to either a general market increase in the value of the property (increases that result without anyone making any changes that affect the value of the property) or to changes (most often, but not always, physical changes) that affect the value of a parcel of property in a way different from the effect that the change has on other property. Value increases to property must be the result of either general market conditions affecting all properties over a relatively large neighborhood or community area, or changes that affect the property value in a way different from the effect on all properties in the neighborhood or community. Since value changes resulting from infrastructure improvements, such as roads needed for immediate access, sewer and water connections, and other types of public services affect the adjacent property values but have no effect on the value of properties in the larger

neighborhood or community, the value increase due to such infrastructure improvements is not due to a general market adjustment but is due to a direct benefit received by those parcels.

Under the Headlee Amendment, these adjustments are to be treated as "additions" because they constitute "new construction and improvements" and Const 1963, art 9, § 31 indicates they are to be excluded from the assessed value of property, as finally equalized, before a determination is made whether the assessed value of property, as finally equalized, has increased over the prior year by more than the increase in the General Price Level.

CONCLUSION

Beginning with the passage of 1978 PA 532, those sophisticated in property tax law knew that the term "additions" included the value of improvements derived from the addition or construction of public services. The separate recognition of these value enhancements is required as a result of the passage of the Headlee Amendment and is required to determine the amount, if any, of the millage rollbacks required by the Headlee Amendment. The term "additions" as used in §34d of the GPTA³² has not been, and is not now, ambiguous. It has a long-standing meaning contrary to that adopted by the Court of Appeals.

It is equally clear that, in order to constitute "additions," improvements to property need not be made to the actual property or by the owner of such property. The Headlee Amendment, which necessitated the adoption of a definition of the term "additions," is driven by the increase in value of all the property in a local unit of government and is not dependant, nor driven by, an increase in value of a particular property within that local unit.

Finally, it is clear that the Legislature, in adopting 1994 PA 415 and setting forth a specific definition for "public services" was not adding the definition for the first time, but rather providing that, for the first time, value enhancements for platting a new subdivision were not to be included as "additions."

³² MCL 211.34d

RELIEF SOUGHT

This Court should reverse the circuit court and Court of Appeals judgments for the reasons (1) that the term "additions," as used in § 34d of the GPTA, is not ambiguous, but rather has that meaning understood by those sophisticated in the law prior to the adoption of Proposal A; (2) that the amendment of § 34d subsequent to the passage of Proposal A did not alter its prior meaning, with the exception of the exclusion of the platting of new subdivisions; and, (3) that "additions" to property can include improvements made to the property by entities other than the landowner.

Respectfully submitted,

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Dated: July 19, 2007
2007001121A/Amicus Brief