RECEIVED by MSC 10/31/2023 3:28:15 PM

IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
Hood, P.J. and Shapiro and Yates, JJ.

SIXARP, LLC,
d/b/a Praxis Packaging Solutions,
Petitioner-Appellee,

v.

Byron Township,
Respondent-Appellant.

Supreme Court Case No.: 166190

Court of Appeals Case No.: 361888

Tax Tribunal Docket No.: 21-000523-TT

Petitioner-Appellee SIXARP, LLC, d/b/a Praxis Packaging Solutions' Answer to Respondent-Appellant's Application for Leave to Appeal

Jackie J. Cook (P68781)
Kimberly A. Cloud (P76296)
Attorneys for Petitioner-Appellee
Novara Tesija Catenacci McDonald & Baas, PLLC
888 W. Big Beaver Road, Suite 600
Troy, MI 48084
(248) 354-0380
jjc@novaralaw.com

RECEIVED by MSC 10/31/2023 3:28:15 PM

Table of Contents

Table of Contents ii
Index of Authorities iv
Counter-Statement of Questions Presented vi
Introduction 1
Counter-Statement of Facts 4
I. Factual Background. 4
A. Praxis's manufacturing business. 4
B. Tax year 2021 – Praxis's application for the EMPP exemption. 5
1. The Township's EMPP exemption denial did not comply with MCL 211.9m. 5
2. The assessor's subsequent communications to Praxis denied Praxis an appointment with the Board of Review and also failed to provide information necessary for perfecting a protest. 7
3. The assessor further impeded Praxis's appearance before the Board by unilaterally rejecting its letter appeal. 8
4. Praxis's letter appeal was timely pursuant to multiple notices published by the Township in a local newspaper. 9
C. In 2022 and 2023, the Township used a corrected form for an EMPP denial, and in both years, the Township treated Praxis's Equipment as exempt EMPP. 10
II. Procedural History. 11
A. The Tax Tribunal. 11
B. The Court of Appeals. 12
Counter-Standard of Review 14
Argument 14
I. Praxis is excused from appearing before the Board of Review as the Township did not comply with the notice requirements under MCL 211.9m. 14
A. MCL 211.9m applies here, not MCL 205.735a. 14
B. *Parkview* is not "bad law"; it has precedential effect and is factually on point. 16
C. *EDS* and its progeny do not conflict with the *Parkview* finding that the protest requirement under MCL 205.735a can be waived when a taxing authority does not comply with a notice statute. 19
D. The Court of Appeals has consistently – and without exception – waived the Board of Review requirement in instances of deficient notice by the taxing authority. 22

E. This Court's opinion in *Highland-Howell* reaffirms the remedial approach and waiver of the protest requirement. 24

II. The Township's failure to comply with the notice requirements under MCL 211.9m violated Praxis's due process rights. 26

Conclusion 29

Certificate of Compliance 29

RECEIVED by MSC 10/31/2023 3:28:15 PM

RECEIVED by MSC 10/31/2023 3:28:15 PM

Index of Authorities

Cases

Abundant Life Christian Ctr v Redford Charter Twp, unpublished per curiam opinion of the Court of Appeals, issued August 1, 2013 (Docket No. 310713), lv den 495 Mich 903 (2013) 23
Ashley Ann Arbor, LLC v Pittsfield Charter Twp, 299 Mich App 138; 829 NW2d 299 (2012) 26
Atchison T & SFR Co v O'Connor, 223 US 280; 32 S Ct 216; 56 L Ed 436 (1912) 26
Barclae v Zarb, 300 Mich App 455; 834 NW2d 100 (2013) 22
Biltmore Wineman, LLC v Northville Twp, unpublished per curiam opinion of the Court of Appeals, issued January 24, 2003 (Docket No. 233901), lv den 468 Mich 941 (2003) 24
Bomba v Bazakis, 342 Mich App 144; 992 NW2d 673 (2022) 19
Craig v County of Grand Traverse, unpublished per curiam opinion of the Court of Appeals, issued April 16, 2019 (Docket No. 342780) 23, 27
Duckett v Solky, __ Mich App __; 991 NW2d 852 (2022) 26
Elec Data Sys Corp v Twp of Flint, 253 Mich App 538; 656 NW2d 215 (2002), lv den 468 Mich 914; 662 NW2d 749 (2003) ..... passim
Grimes v Mich DOT, 475 Mich 72, 85; 715 NW2d 275 (2006) 15
Grimm v Dep't of Treasury, 291 Mich App 140; 810 NW2d 65 (2010) 20
Half Pipe, LLC v Twp of Livingston, unpublished per curiam opinion of the Court of Appeals, issued April 25, 2017 (Docket No. 329197) 23
Highland-Howell Dev Co, LLC v Twp of Marion, 478 Mich 932; 733 NW2d 761 (2007) 24, 25
In re Petition of Wayne Co Treasurer, 286 Mich App 108; 777 NW2d 507 (2009) 21
Jehovah Shalom Church of God v City of Detroit, unpublished per curiam opinion of the Court of Appeals, issued April 23, 2020 (Docket No. 248320) 21
Le Fever v Matthews, 336 Mich App 651; 971 NW2d 672 (2021) 15
Leahy v Orion Twp, 269 Mich App 527; 711 NW2d 438 (2006) 21
Legacy Custom Builders, Inc v Rogers, ___ Mich App ___; ___ NW2d ___ (2023) (Docket No. 359213) 19
Mays v Snyder, 323 Mich App 1; 916 NW2d 227 (2018), aff'd sub nom *Mays v Governor*, 506 Mich 157; 954 NW2d 139 (2020) 15
McKesson Corp v Div of Alcoholic Bevs & Tobacco, 496 US 18; 110 S Ct 2238; 110 L Ed 2d 17 (1990) 26
Mich State Univ v City of Lansing, unpublished per curiam opinion of the Court of Appeals, issued February 15, 2005 (Docket No. 250813) 22, 23
Mikelonis v Alabaster Twp, 307 Mich App 606; 861 NW2d 354 (2014) 20
Morehouse v Twp of Mackinaw, unpublished per curiam opinion of the Court of Appeals, issued March 17, 2009 (Docket No. 281483) 22, 23
Pacific Props v Shelby Twp, unpublished per curiam opinion of the Court of Appeals, issued March 1, 2005 (Docket No. 249945) 21
Parkview Mem Ass'n v Livonia, 183 Mich App 116; 454 NW2d 169 (1990), lv den 437 Mich 924 (1991), recon den 1991 Mich LEXIS 1280 (1991) ..... passim

Robinson v City of Detroit, 462 Mich 439; 613 NW2d 307 (2000) 15
Schaumann-Beltran v Gemmete, 509 Mich 979; 973 NW2d 308 (2022) 19
Schellenberg v Bingham Twp, unpublished per curiam opinion of the Court of Appeals, issued May 11, 2010 (Docket No. 289801), lv den 488 Mich 871 (2010), recon den 488 Mich 997 (2010) 23, 24
Spectrum Health Hosps v Farm Bureau Mut Ins Co, 492 Mich 503; 821 NW2d 117 (2012) 15
Strata Oncology Inc v Dep't of Treasury, __ Mich App __; __ NW2d __ (2023) 20
VHS Huron Valley Sinai Hosp v Sentinel Ins Co, 322 Mich App 707; 916 NW2d 218 (2018), lv den 508 Mich 924 (2021) 19
W & E Burnside, Inc v Bangor Twp, 402 Mich 950*l* (1978) ..... passim
W & E Burnside, Inc v Bangor Twp, 77 Mich App 618; 259 NW2d 160 (1977), rev'd 402 Mich 950l (1978) 18
W A Foote Mem'l Hosp v City of Jackson, 262 Mich App 333; 686 NW2d 9 (2004). 20
Wells Fargo Rail Corp v State of Michigan, __ Mich App __; __ NW2d __ (2022) (Docket No. 359399), lv den 990 NW2d 355 (2023) 4, 26, 27

Statutes

MCL 205.22 20
MCL 205.735(1) 17, 25
MCL 205.735(2) 2, 19, 24, 25
MCL 205.735(3) 19
MCL 205.735a ..... passim
MCL 205.735a(3) 2
MCL 211.24c 18
MCL 211.24c(5) 17, 18
MCL 211.30 ..... 6, 7, 12, 13
MCL 211.53a 21
MCL 211.9m ..... passim
MCL 211.9m(2) 13
MCL 211.9m(2)(c) 1
MCL 211.9m(3) ..... passim
MCL 211.9n ..... vi, 5
MCL 211.9n(2) 13
MCL 211.9n(3) 13, 14, 27

Rules

MCR 2.116(C)(10) 12
MCR 2.116(C)(4) 12
MCR 7.212(B)(3) 29
MCR 7.215(C)(2) 19
MCR 7.215(J)(1) 19

RECEIVED by MSC 10/31/2023 3:28:15 PM

RECEIVED by MSC 10/31/2023 3:28:15 PM

Counter-Statement of Questions Presented

1. When a taxing authority denies a taxpayer's manufacturing exemption claim for personal property under MCL 211.9m,[1] the taxing authority is required to give the taxpayer notice in writing about how to appeal the denial to the local Board of Review. If the Board of Review denies the exemption, the taxpayer may appeal the Board of Review's decision to the Michigan Tax Tribunal under MCL 211.9m. In this case, Byron Township, the taxing authority, did not comply with the statutory notice provisions under MCL 211.9m, thereby preventing Praxis, the taxpayer, from first complying with the requirements for perfecting an appeal before the Board of Review before appealing to the Tax Tribunal.

Under MCL 211.9m, may the Tax Tribunal decide Praxis's exemption claim although the Township prevented Praxis from appearing first before the Board of Review?

Petitioner-Appellee answers:	Yes
Respondent-Appellant answers:	No
Tax Tribunal answered:	No
Court of Appeals answered:	Yes

[1] For the sake of simplicity, references to MCL 211.9m are intended to be references to both MCL 211.9m and MCL 211.9n, as the statutes contain identical language about the procedures for appealing an exemption denial, although they pertain to different types of manufacturing property.

RECEIVED by MSC 10/31/2023 3:28:15 PM

2. The Court of Appeals held the Tax Tribunal may decide Praxis's exemption claim although Praxis did not first appear before the Board of Review, because the Township's notice about the exemption denial and Praxis's appeal rights did not comply with MCL 211.9m. The Township's inadequate notice also deprived Praxis of the opportunity to be heard, violating Praxis's due process rights.[2]

Did the Township's failure to comply with the notice requirements under MCL 211.9m violate Praxis's due process rights?

Petitioner-Appellee answers: Yes

Respondent-Appellant answers: No

Tax Tribunal answered: No

Court of Appeals answered: Yes

[2] Appellant presented three questions; however, Appellant's briefing on the last two questions was merged together under Appellant's second argument, "The Notice in this Case was Adequate." For the sake of clarity, Appellee responds to Appellant's second argument with one question presented and one argument section, rather than two. This aligns with how the questions were presented to the Court of Appeals, first, applying the plain language of MCL 211.9m, and, second, considering the implication to the taxpayer's due process rights.

RECEIVED by MSC 10/31/2023 3:28:15 PM

Introduction

Each year, property tax assessments are issued by the local taxing authority on taxable property in Michigan. Businesses are assessed tax for their personal property, meaning equipment and other property not permanently affixed to buildings or land. The Legislature has provided for certain property tax exemptions, including the "eligible manufacturing personal property tax" (EMPP) which exempts qualifying personal property used for manufacturing in the State.

The procedure for applying for the EMPP each year is set forth in MCL 211.9m. A taxpayer files an application with the local taxing authority's assessor. If the assessor denies the exemption, the assessor is required to notify the taxpayer "in writing of the reason for the denial and advising the person that the denial must be appealed to the board of review under section 30 by filing" the exemption application, called the "combined document." MCL 211.9m(3). The taxpayer may appeal a denial by the Board of Review to the Michigan Tax Tribunal. MCL 211.9m(2)(c).

Here, the Court of Appeals held that the taxing authority, Appellant Byron Township (the Township), did not comply with the notice requirements under MCL 211.9m: (1) the Township assessor did not advise the taxpayer, Appellee Praxis,[3] of the Board of Review's meeting schedule; (2) the Board of Review adjourned its meetings on March 9 although the Township published March 10 as the last day the Board would meet; (3) the Township assessor rejected the taxpayer's requests for an in-person appearance before the Board; and (4) the Township assessor did not inform Praxis it was required to re-file the exemption application with the Board.

The Court of Appeals held that because the assessor failed to comply with the statutory notice requirements under MCL 211.9m(3), Praxis may "bypass the requirement that it first protest

[3] Petitioner-Appellee SIXARP, LLC d/b/a Praxis Packaging Solutions' is referred to as "Praxis."

RECEIVED by MSC 10/31/2023 3:28:15 PM

to the Board of Review before appealing to the [Tax Tribunal]."[4] The Court of Appeals identified a second legal basis for reaching this conclusion: Praxis's due process rights were violated by the assessor's failure to comply with the notice requirements under MCL 211.9m.[5]

In an attempt to get the attention of this Court, the Township's Application creates a fictional "duel" or "conflict" between *Parkview Mem Ass'n v Livonia* (*Parkview*),[6] a published Court of Appeals opinion from 1990 relied on in the Court of Appeals opinion, and *Elec Data Sys Corp v Flint Twp* (*EDS*),[7] a published Court of Appeals opinion from 2002 not mentioned in the Court of Appeals opinion (nor briefed by the Township in its Brief on Appeal).

The Township's fictional "duel" argument is fundamentally and legally flawed for two reasons. *First*, the Township seeks to expand this case to a broader question about the Tax Tribunal's jurisdiction under MCL 205.735a when instead this case is about the procedures set forth in MCL 211.9m for perfecting an appeal to the Tax Tribunal. MCL 205.735a was not even cited in the Court of Appeals opinion. Indeed, although *Parkview* is instructive to this case, as the Court of Appeals found, the Township blows the importance of reconciling *Parkview* and *EDS* – which interpret MCL 205.735a – out of proportion in the context of this case – which interprets MCL 211.9m. *Second*, a close review of *Parkview* and *EDS* and their progeny reveal there is no "duel" or "conflict" as the Township suggests.

---

[4] *SIXARP LLC d/b/a Praxis Packaging Solutions v Byron Twp*, __ Mich App __; __ NW2d __ (2023) (COA Docket No. 361888) ("*SIXARP*"), slip op at 7; a copy of the opinion is attached to the Township's Application as Exhibit 1.
[5] *Id*. at 13.
[6] *Parkview Mem Ass'n v Livonia*, 183 Mich App 116, 119-121; 454 NW2d 169 (1990), lv den 437 Mich 924 (1991), recon den 1991 Mich LEXIS 1280 (1991).
[7] *Elec Data Sys Corp v Twp of Flint*, 253 Mich App 538; 656 NW2d 215 (2002), lv den 468 Mich 914; 662 NW2d 749 (2003).

RECEIVED by MSC 10/31/2023 3:28:15 PM

Parkview and *EDS* discuss MCL 205.735(2) (now MCL 205.735a(3)) which states certain tax assessments – not EMPP exemption denials – "must be protested before the board of review before the tribunal acquires jurisdiction." In *EDS*, the Tax Tribunal dismissed the taxpayer's petitions filed late, asserting the Tax Tribunal was not vested with jurisdiction under MCL 205.735. There was no allegation of deficient notice by the taxing authority. The Court of Appeals' holding here – that because the assessor's notice under MCL 211.9m was defective, the taxpayer could bypass a Board of Review appearance under MCL 211.9m – does not conflict with *EDS*.

In *Parkview*, by the time the taxpayer received notice of an assessment, it was too late for the taxpayer to appear before the Board of Review. Because the taxing authority failed to give the taxpayer timely notice about the assessment, the Court of Appeals held the taxpayer's appearance before the Board was not a prerequisite to vesting the Tax Tribunal with jurisdiction.[8] The facts in *EDS* and *Parkview* were very different, and so their central holdings do not conflict.

This case is about interpreting MCL 211.9m, and given the similarity of facts, the Court found the analysis in *Parkview* persuasive. There is a discussion in *Parkview* and *EDS* about what the Legislature intended by referring to "jurisdiction" in MCL 205.735a that could be read as conflicting; however, MCL 211.9m does not mention "jurisdiction" and so those discussions about MCL 205.735a in *Parkview* and *EDS* simply have no bearing on this case.

The Court of Appeals correctly interpreted the plain language of MCL 211.9m in the context of a fact pattern involving defective notice and decided the taxpayer could bypass the Board of Review when there was defective notice impacting their ability to appear before the Board. The assessor did not comply with requirements in MCL 211.9m, and so the taxpayer was

[8] *Parkview*, 183 Mich App at 170-171, citing *W & E Burnside, Inc v Bangor Twp*, 402 Mich 950l (1978).

RECEIVED by MSC 10/31/2023 3:28:15 PM

excused from complying with other requirements in MCL 211.9m. To hold otherwise would punish a taxpayer for the actions of an assessor. To hold otherwise would give a license to assessors to defy the notice requirements without consequence.

The Court of Appeals also properly vested the Tax Tribunal with jurisdiction on a separate ground, finding the Township's provision of defective notice under MCL 211.9m violated Praxis's due process rights. The Township challenges the Court's holding, again, by focusing on the wrong law. The Court of Appeals properly held it has equitable powers; the Township's focus is misdirected by arguing the Tax Tribunal lacks equitable powers. Recent, binding authority of the Court of Appeals holds that it can vest the Tax Tribunal with jurisdiction when the circumstances make it necessary to remedy a due process violation.[9] The Court of Appeals properly found the Township's violation of Praxis's due process rights warranted such a remedy here.

The Application does not present colorable grounds for this Court to review the Court of Appeals opinion. The Application should be denied.

Counter-Statement of Facts[10]

I. Factual Background.

A. Praxis's manufacturing business.

For over 30 years, Praxis has provided contract packaging service for consumer products.[11] It operates a manufacturing plant in the Township where it processes, combines, and fills over-the-counter products and prescription pharmaceuticals in accordance with federal and state

[9] *Wells Fargo Rail Corp v State of Michigan*, __ Mich App __; __ NW2d __ (2022) (Docket No. 359399), lv den 990 NW2d 355 (2023). A copy of *Wells Fargo* is at **MSC App A, 001a-012a**.

[10] Praxis cites herein to the Appendix and Supplemental Appendix filed by it with the Michigan Court of Appeals, marked as COA App. A through AA and COA Supp. App. BB through DD. Praxis has also filed an appendix with its Answer to the Michigan Supreme Court, cited herein as MSC App. A through F.

[11] King Affidavit, ¶ 3, **COA App. N at 098a-099a**.

RECEIVED by MSC 10/31/2023 3:28:15 PM

regulations.[12] It utilizes certain manufacturing equipment, reported under tax parcel nos. 41-50-15-020-701 and 41-50-15-022-343 (the "Equipment"),[13] to convert the products into finished goods that are then ready for retail sale and distribution.[14]

B. Tax year 2021 – Praxis's application for the EMPP exemption.

1. The Township's EMPP exemption denial did not comply with MCL 211.9m.

For tax year 2021, Praxis timely applied for the EMPP exemption for its Equipment by filing with the Township Form 5278, known as the "Eligible Manufacturing Personal Property Tax Exemption Claim, Personal Property Statement, and Report of Fair Market Value of Qualified New and Previously Existing Personal Property (Combined Document)" (referred to as the "EMPP Application" or the "combined document").[15] The Township's assessor, Timothy Baker ("Baker"), denied Praxis's EMPP Application, issuing an "Assessor Denial of Request for Exemption as Eligible Manufacturing Personal Property Defined in MCL 211.9m and 211.9n" (referred to as "2021 EMPP Denial").[16] The Township claims the 2021 EMPP Denial was a "Treasury form" (Township's Answer, p 2); however, no evidence of where this so-called "Treasury form" came from was ever offered by the Township. What was evident is that it was not an official form

[12] *Id*. at ¶ 4-6, **COA App. N at 099a**.
[13] Prior to and for purposes of tax year 2021, Praxis's Equipment was assessed under one tax parcel number, i.e., 41-50-15-020-701; however, following Praxis's application for the EMPP exemption in tax year 2022, the Township had created a second tax parcel number, i.e., 41-50-15-022-343, to reflect the Equipment at issue was located at two different locations. As discussed herein, all of Praxis's Equipment in Byron Township has been exempt as EMPP since tax year 2022.
[14] *Id*. at ¶ 4, **COA App. N at 099a**.
[15] Combined document, **COA App. E, 040a-052a**. See also Karsten Affidavit, ¶ 3, **COA App. O at 102a-103a**.
[16] 2021 EMPP Denial, **COA App. D at 037a**.

RECEIVED by MSC 10/31/2023 3:28:15 PM

approved by the Michigan Department of Treasury[17] or otherwise posted by the Treasury on its website for "Personal Property Tax Exemptions."[18]

Irrespective, MCL 211.9m(3) instructed the assessor as to what information he was statutorily required to provide the taxpayer upon issuance of a written denial of an EMPP application:

> If the assessor of the township or city believes that personal property for which the form claiming an exemption is timely filed each year under subsection (2)(c) is not qualified new personal property or the form filed was incomplete, the assessor may deny that claim for exemption by **notifying the person that filed the form in writing of the reason for the denial and advising the person that the denial must be appealed to the board of review under section 30 by filing a combined document as prescribed under subsection (2)**.

(emphasis added). Moreover, the 2021 EMPP Denial echoed the assessor's statutory obligation when issuing a denial of an EMPP application by stating the assessor "must notify the taxpayer of the denial and their right to appeal."[19] The issue, however, was the only information provided on the denial as to Praxis's right to appeal was that "[a] taxpayer who timely and properly filed Form 5278 [the combined document] may appeal an assessor's denial of the EMPP exemption to the March Board of Review under MCL 211.30."[20] There is no dispute that the 2021 EMPP Denial did not notify Praxis as to the following information pertinent to its right to appeal the denial:

- That Praxis was required to re-file the combined document with the Board;
- The Date(s) and time(s) that the Board was meeting; The location(s) for any Board of Review meetings;

---

[17] Treasury's list of "Local Government Official Forms," **COA App. Q, 122a-130a**; it is also available at <https://www.michigan.gov/treasury/0,4679,7-121-1751_2164_45595_45616-163589--,00.html>.

[18] Printout of Treasury's webpage for "Personal Property Tax Exemptions," **COA App. R, 131a-133a**; it is also available at <https://www.michigan.gov/taxes/0,4676,7-238-43535_72736-358292--,00.html>.

[19] 2021 EMPP Denial, **COA App. D at 037a**.

[20] *Id*.

RECEIVED by MSC 10/31/2023 3:28:15 PM

- The manner in which Board meetings were to be held (in-person or virtual); and
- The method for submission of a protest of an EMPP denial to the Board (i.e., in-person, remotely via zoom, by mail and/or electronically).

None of this information is contained in MCL 211.30 either.

2. The assessor's subsequent communications to Praxis denied Praxis an appointment with the Board of Review and also failed to provide information necessary for perfecting a protest.

In addition to the 2021 EMPP Denial being deficient notice, the communications that occurred between the assessor (Mr. Baker) and Praxis following Praxis's receipt of the 2021 EMPP Denial and prior to the Board meeting also failed to give Praxis the requisite notice. Tellingly, the Township's Application ignores these communications in which Mr. Baker failed to provide requested information to Praxis, although the Court of Appeals found them relevant.[21]

The first communication disregarded by the Township was a telephone call by Praxis's then-finance controller, Tim Karsten, to Mr. Baker on or about February 26, 2021.[22] During this telephone call, Mr. Karsten: (1) provided notice of Praxis's appeal of the exemption denial, (2) requested a hearing date, and (3) asked for the requirements of an appeal.[23] Mr. Baker did not provide a hearing date as requested; instead, Mr. Baker instructed Mr. Karsten to submit a "letter."[24] Mr. Baker neither advised Mr. Karsten of any deadline for submission of the letter nor that the combined document would need to be refiled in order to perfect an appeal before the Board.[25]

---

[21] *SIXARP*; slip op at 9-13.
[22] Karsten Affidavit, ¶ 5, **COA App. O, at 103a**.
[23] *Id*.
[24] *Id*.
[25] *Id*.

RECEIVED by MSC 10/31/2023 3:28:15 PM

Shortly thereafter, Praxis retained Lisa Pohl, a financial services professional, to handle its appeal of the 2021 EMPP Denial to the Board.[26] In early March 2021, Ms. Pohl contacted Mr. Baker, advised him she was handling Praxis's appeal, requested an in-person appearance before the Board, and requested information about appeal procedures and deadlines.[27] In response, on March 2, 2021, Mr. Baker left Ms. Pohl the following voicemail: [28]

> Hi Lisa, this is Tim Baker from Byron Township Assessing. I am returning your phone call. The, to your question as far as the assessment, ***I think the letter appeal would be the best. Just state your arguments and . . . then send in a letter form.*** We need to get you a petition, so you can sign the petition so there's something a little more formal with it. [S]o, if you can, send me an e-mail, with your letter, and then I can send back a petition for you to sign. I'd also need you to include the agency agreement you have with the owners of the personal property. My e-mail that you can send it to, and it's a general e-mail, is assessor – a-s-s-e-s-s-o-r -@byrontownship, all spelled out,. o-r-g. And then give me a call if you have any additional questions. Thank you. Bye.

Mr. Baker's instructions were to email a "letter appeal" stating Praxis's arguments, along with an "agency agreement" as to her authority to represent Praxis in the appeal, and then he would email her a petition form to sign for the appeal. As the Court of Appeals' recognized in its opinion, "Baker did not provide a hearing date for the appeal, a deadline for filing the appeal, or the Board's meeting schedule. . . . [and further] failed to advise Pohl that Praxis had to refile the combined document with the Board to perfect its appeal."[29]

3. The assessor further impeded Praxis's appearance before the Board by unilaterally rejecting its letter appeal.

Following the instructions provided by Mr. Baker in his voicemail, on March 10, 2021, Praxis submitted via electronic mail the following: (1) an "agency agreement" stating Ms. Pohl

---

[26] Pohl Affidavit, ¶ 6, **COA App. P, at 109a**.
[27] *Id*. at ¶ 7, **COA App. P, at 109a-110a**.
[28] *Id*. at ¶ 8, **COA App. P, at 110a**. Certain verbiage, such as "uh," "um" and "yeah," is removed from the quote here.
[29] *SIXARP*; slip op at 4.

RECEIVED by MSC 10/31/2023 3:28:15 PM

was an authorized representative to handle the appeal of the exemption denial on behalf of Praxis, and (2) a "letter appeal" detailing the basis for Praxis's appeal of the exemption denial.[30] Mr. Baker was expected to then respond with a petition form for Praxis to sign.[31]

However, on March 11, 2021, Mr. Baker responded to Ms. Pohl's email, stating: "I'm sorry, but the Board has adjoined at 9:00 p.m. on 3/9/2021."[32] Within minutes of receiving Mr. Baker's email, Praxis's representative, Ms. Pohl, responded to the assessor:[33]

> The taxpayer requested a hearing and you did not give them one. You told the taxpayer to remit a letter without providing a due date. You communicated with me and did not provide a due date. The assessor guidelines do not indicate that an assessor cannot consider an appeal if it [is] not filed by the time of the last hearing for the March Board of Review.
>
> You were on notice that the taxpayer was going to appeal. The taxpayer followed your directions. What recourse does the taxpayer have for following your directions and being denied the exemption?

It was undisputed that Mr. Baker did not respond to Ms. Pohl and that Ms. Pohl was not otherwise contacted by the Township or the Board regarding Praxis's appeal of the exemption denial.

4. Praxis's letter appeal was timely pursuant to multiple notices published by the Township in a local newspaper.

The Township published information for appeals to the Board of Review in the Grand Rapids Press on three occasions, i.e., February 21, February 23, and February 25, 2021.[34] Specifically, each posting stated:[35]

> Notice is hereby given that the Board of Review **shall convene on the 8th day of March, 2021 and shall sit not less than three calendar days** to review the 2021 Assessment Roll of the Township of Byron and to hear complaints of persons

[30] Karsten Affidavit, ¶ 6 & Exh. A (Agency Agreement), **COA App. O, at 103a & 106a**; Pohl Affidavit, ¶ 9 & Exh. B (Letter Appeal), **COA App. P, at 110a-111a and 117a-118a**.
[31] *Id*. at ¶ 8, **COA App. P, at 110a**.
[32] *Id*. at ¶ 10 & Exh. C (Emails with assessor), **COA App. P at 111a-112a and 120a-121a**.
[33] *Id*.
[34] **COA Supp. App. BB at 216a**.
[35] *Id*.

RECEIVED by MSC 10/31/2023 3:28:15 PM

> considering themselves aggrieved by these values. Residents and non-resident taxpayers may file his or her protest by letter without a personal appearance
>
> * * *
>
> **Board of Review appointments may be made by contacting the Assessor's Office from March 1st through March 10th**.

Thus, through these publications, the Township communicated to the public that the Board of Review would sit at least through March 10, 2023 (three calendar days from the 8th day of March) and that Board appointments could be made through "March 10th" by contacting the assessor.

The Township relies solely on the 2021 Notice of Assessment sent, the purpose of which is to advise a taxpayer about a tax assessment and is unrelated to the EMPP exemption. The Court of Appeals noted, however, the newspaper postings were published after the Notice of Assessment was sent to Praxis.[36] Taking all the facts together, the Court of Appeals determined the notices, the publications, and the communications with Mr. Baker "created confusion about the days on which the Board of Review would meet" and confusion about the deadline for submitting a letter appeal, not to mention he never advised them they were required to resubmit the combined document in order to perfect an appearance before the Board of Review.[37]

C. In 2022 and 2023, the Township used a corrected form for an EMPP denial, and in both years, the Township treated Praxis's Equipment as exempt EMPP.

The following year, 2022, Praxis again filed an application seeking the EMPP exemption for its Equipment with the Township. The Township again denied the application; ***however***, the form of the denial notice sent by the Township for 2022 contained material differences from the defective form used in 2021, namely, the new form disclosed: (1) the specific reason(s) for denying the EMPP application, i.e., that there was a question regarding the ownership/leasing of the real property upon which the Equipment was located, (2) the requirement that the combined document

[36] *SIXARP*; slip op at 12.
[37] *Id*.

RECEIVED by MSC 10/31/2023 3:28:15 PM

be refiled with the Board of Review before its last meeting, and (3) the meeting schedule for the Board of Review, including the specific dates, times, and location for each meeting (the "2022 EMPP Denial").[38] It is undisputed that none of this information was contained in the 2021 EMPP Denial.[39] Notably, prior to this point in time which was early 2022, Praxis had filed a petition with the Tax Tribunal, putting the Township on notice of the same legal arguments presented here, namely that the form used in 2021 was legally deficient in providing the notice required by MCL 211.9m.

Based on the more detailed 2022 EMPP Denial, and from subsequent communications with the assessor, Praxis discovered for the first time the Township denied the exemption, because the Township had a question about the ownership and leasing of the real property on which the Equipment is located. Once Praxis understood the reason for the Township's denial, Praxis was able to submit additional documentation resolving the Township's question. As a result, the EMPP exemption was granted in 2022[40] and again in 2023.

II. Procedural History.

A. The Tax Tribunal.

On April 13, 2021, Praxis timely filed a petition with the Tax Tribunal appealing the Township's denial of its EMPP Application (petition).[41] The parties filed cross motions for

[38] 2022 EMPP Denial, **COA App. G at 054a-055a**.
[39] Compare 2021 EMPP Denial, **COA App. D at 037a**, to 2022 EMPP Denial, **COA App. G at 054a-055a**.
[40] 2022 Board Decisions, **COA App. L at 096a and COA App. M at 097a**.
[41] **COA App. D, 022a-039a**. The petition was timely filed within 35 days from (1) the assessor's determination not to bring Praxis's protest to the Board of Review, (2) the Board of Review concluding meetings a day earlier than published without reviewing Praxis's protest, and (3) the assessor notifying Praxis of his decision not to accept Praxis's protest. The petition was otherwise timely as it was filed before May 31 under MCL 205.735a(6). The Township did not claim the petition was not timely filed when the Township moved for summary disposition before the Tax Tribunal, claiming the Tax Tribunal did not have jurisdiction under MCL 205.735a. The issue of

RECEIVED by MSC 10/31/2023 3:28:15 PM

summary disposition regarding the Tax Tribunal's jurisdiction over Praxis's appeal. Praxis requested partial summary disposition under MCR 2.116(C)(10), asserting the Tax Tribunal has jurisdiction as Praxis was not required to appear before the Board because the Township failed to comply with MCL 211.9m(3) and MCL 211.30 and violated Praxis's due process rights. The Township sought dismissal of the appeal under MCR 2.116(C)(4) and MCR 2.116(C)(10), contending that the Tax Tribunal lacked jurisdiction because Praxis did not appear before the Board of Review.

By final order entered April 12, 2022, the Tax Tribunal denied Praxis's motion, entering summary disposition in favor of the Township and dismissed the Petition, finding that the Tax Tribunal lacked jurisdiction over Praxis's appeal.[42] By final order entered May 31, 2022, the Tax Tribunal denied Praxis's motion for reconsideration.[43]

B. The Court of Appeals.

On June 21, 2022, Praxis timely filed a Claim of Appeal with the Court of Appeals appealing the Tax Tribunal's final orders of April 12, 2022 and May 31, 2022. On August 22, 2023, the Court issued an opinion reversing the Tax Tribunal's final orders and remanding the case to the Tax Tribunal to decide whether Praxis qualifies for the EMPP exemption in 2021.[44]

The Court of Appeals found the Township's assessor was required to provide certain notice to Praxis under MCL 211.9m(3) when denying the EMPP exemption.[45] By law, the assessor was required to notify Praxis "(1) in writing (2) of the reason for the denial and (3) advising Praxis that

---

the timeliness of the petition was not reviewed by the Tax Tribunal nor the Court of Appeals as the issue was never raised. Regardless, as demonstrated above, there are four ways of considering the petition timely filed as alleged in Praxis's Tax Tribunal petition at para. 4-7.

[42] Tax Tribunal Order of 4/12/22, **COA App. A, 001a-016a**.

[43] Tax Tribunal Order of 5/31/22, **COA App. B, 017a-018a**.

[44] *SIXARP*; slip op at 1-13.

[45] *Id*. at 9-10.

RECEIVED by MSC 10/31/2023 3:28:15 PM

the denial had to be appealed to the Board of Review under MCL 211.30 by filing a combined document as prescribed under MCL 211.9m(2) and MCL 211.9n(2)."[46] The Court found "the assessor failed to inform Praxis that it had to re-file its combined document to perfect its appeal before the Board of Review, as required under MCL 211.9m(3) and MCL 211.9n(3)."[47] In addition, the Court found the assessor failed to provide "sufficient information" despite multiple inquiries by Praxis about how to appeal and the deadline for appealing: "the assessor, never provided Praxis's representatives with the Board's schedule or the deadline for protesting to the Board of Review, despite multiple requests from them."[48] The Court also found the Township published "conflicting information" as to the meeting schedule of the Board of Review in local newspaper publications, adjourning its meetings on March 9, 2021, despite publishing that the Board would meet on March 10, 2021.[49]

The Court of Appeals held the Tax Tribunal had jurisdiction. Because the assessor did not comply with the notice requirements in MCL 211.9m, Praxis was excused from complying with the requirement in MCL 211.9m that it first appear before the Board of Review before filing a petition with the Tax Tribunal.[50] The Court's holding was supported by two grounds.

First, the Court interpreted MCL 211.9m, finding the Township's defective notice "prevented Praxis from complying with the requirements for perfecting its appeal before the March Board of Review";[51] accordingly, Praxis could "bypass the requirement that it first protest to the Board of Review before appealing to the MTT."[52] In so holding, the Court of Appeals noted its

[46] *Id*. at 9.
[47] *Id*. at 10.
[48] *Id*. at 11-12.
[49] *Id*. at 11-12.
[50] *Id*. at12.
[51] *Id*. at 10.
[52] *Id*. at 7.

RECEIVED by MSC 10/31/2023 3:28:15 PM

interpretation of MCL 211.9m was "strongly support[ed]"[53] by *Parkview* and the Supreme Court's "remedial approach" from *W & E Burnside, Inc v Bangor Twp* (*Burnside*),[54] followed in *Parkview*.

Second, the Court of Appeals found the Township's failure to comply with MCL 211.9m(3), through inaccurate, conflicting, and/or incomplete publications, notices and telephone communications deprived Praxis of due process.[55] Specifically, the Court found "although MCL 211.9m(3) and MCL 211.9n(3) facially comport with due process, Byron Township failed to comply with the obligations imposed by the statutes and, therefore, it deprived Praxis of due process."[56] The Tax Tribunal is vested with jurisdiction to hear Praxis's petition for the EMPP exemption.[57]

Counter-Standard of Review

Praxis adopts the standard of review set forth by the Court of Appeals.[58]

Argument

I. Praxis is excused from appearing before the Board of Review as the Township did not comply with the notice requirements under MCL 211.9m.

A. MCL 211.9m applies here, not MCL 205.735a.

The Township seeks to expand this case to a broader question about the Tax Tribunal's jurisdiction under MCL 205.735a; instead, this case is about the procedures set forth in MCL 211.9m for perfecting an appeal to the Tax Tribunal. MCL 205.735a was not even cited in the Court of Appeals opinion. (Oddly, it is the only statute cited in the Application's Introduction.)

---

[53] *Id*. at 12.
[54] *W & E Burnside, Inc v Bangor Twp*, 402 Mich 950*l* (1978).
[55] *SIXARP*; slip op at 13.
[56] *Id*.
[57] *Id*.
[58] *SIXARP*; slip op at 6-7.

RECEIVED by MSC 10/31/2023 3:28:15 PM

"[T]he first step of statutory interpretation is to review the language of the statute at issue, not that of another statute."[59] When said statute itself answers the question at hand and is without reference to another statute, the courts must give effect to its language and not look elsewhere.[60] "[R]eliance on an unrelated statute to construe another is a perilous endeavor to be avoided by our courts."[61] MCL 211.9m contains no reference to MCL 205.735a and plainly details the relevant procedures for an appeal when an EMPP application is denied.[62]

To be clear, there are no cases interpreting the procedural requirements in MCL 211.9m yet, and so the Court of Appeals correctly considered cases interpreting similar procedural requirements in MCL 205.735a, such as *Parkview*. But the interpretation of MCL 205.735a is simply not before this Supreme Court. Appellant attempts to create a legal conflict that does not exist in an attempt to get the attention of this Supreme Court.

Notably, MCL 205.735a refers to how "the tribunal acquires jurisdiction" of certain tax disputes. Cases have discussed what the Legislature intended by MCL 205.735a's (and its predecessor, MCL 205.735's) several references to "jurisdiction" in MCL 205.735a. *EDS* held

---

[59] *Spectrum Health Hosps v Farm Bureau Mut Ins Co*, 492 Mich 503, 521; 821 NW2d 117 (2012) (finding it was erroneous to look at another statutory scheme to interpret the meaning of the subject statute); *Le Fever v Matthews*, 336 Mich App 651, 666-667; 971 NW2d 672 (2021) (citations omitted) (finding "the trial court erroneously considered . . . other . . . statutes [that were not] implicated by the facts of the case).

[60] *Mays v Snyder*, 323 Mich App 1, 37-38; 916 NW2d 227 (2018), aff'd sub nom *Mays v Governor*, 506 Mich 157; 954 NW2d 139 (2020). "Because the Legislature is presumed to understand the meaning of the language it enacts into law, statutory analysis must begin with the wording of the statute itself. . . . Where the language of the statute is clear and unambiguous, the Court must follow it." *Robinson v City of Detroit*, 462 Mich 439, 459; 613 NW2d 307 (2000) (citations omitted).

[61] *Grimes v Mich DOT*, 475 Mich 72, 85; 715 NW2d 275 (2006) (refusing to consider the definitions contained in the Motor Vehicle Code in its interpretation of a statute under the Government Tort Liability Act).

[62] *Id*.

RECEIVED by MSC 10/31/2023 3:28:15 PM

MCL 205.735 defines the "subject-matter jurisdiction" of the Tax Tribunal[63] where *Parkview* held instead MCL 205.735 sets "procedural requirements for perfecting an appeal in the Tax Tribunal."[64] Regardless, this alleged "conflict" between *EDS* and *Parkview* interpreting MCL 205.735a is not before the Michigan Supreme Court today as MCL 211.9m does not mention "jurisdiction." Finding the facts here similar to those in *Parkview*, the Court of Appeals found the Court's interpretation of MCL 205.735a in *Parkview* instructive in interpreting the procedural requirements in MCL 211.9m. But any interpretation of MCL 211.9m simply does not carry with it a debate about what the Legislature meant by "jurisdiction."

The procedural requirements for perfecting an appeal of an EMPP exemption denial under MCL 211.9m, stripped down to its plainest language and simplest meaning, requires the assessor to give notice to the taxpayer about how to appeal an exemption denial. The Court of Appeals, in reviewing MCL 211.9m, held that *if* the assessor does not comply with the notice requirements under MCL 211.9m, and the taxpayer is unable to take the next step and perfect an appeal before the Board of Review, *then* the statutory procedure under MCL 211.9m has been broken by the assessor's actions, and the taxpayer is accordingly excused from the Board of Review requirement. The Court of Appeals supported this holding with citations to *Parkview* and other related cases discussed in more detail below. The Court held that *Parkview* "strongly supports the conclusion that the MTT should hear Praxis's claims."[65]

B. *Parkview* is not "bad law"; it has precedential effect and is factually on point.

The Court of Appeals has routinely found waiver of the Board of Review appearance requirement under MCL 205.735a (and its predecessor, MCL 205.735) when the taxing authority's

[63] *EDS*, 253 Mich App at 542.
[64] *Parkview*, 183 Mich App at 121.
[65] *SIXARP*; slip op at 12.

RECEIVED by MSC 10/31/2023 3:28:15 PM

action or inaction contributed to the taxpayer not appearing before the Board of Review.[66] In line with these cases, the Court of Appeals held the Township's failure to provide adequate notice of the time or manner for appealing the denial of the EMPP exemption in MCL 211.9m(3) contributed to Praxis not appearing before the Board of Review and, like the taxpayers in the cases cited above, Praxis could appeal directly to the Tax Tribunal without satisfying the Board of Review protest requirement.[67]

In *Parkview*, the city issued untimely notice of an increased assessment in violation of MCL 211.24c(5), resulting in the petitioners not receiving notice until after the last meeting of the board of review and, thus, depriving the petitioners of an opportunity to protest the assessments to the board.[68] The Tax Tribunal dismissed the petition, finding it lacked jurisdiction because the petitioners had not first appeared before the Board of Review.[69]

The Court of Appeals reversed.[70] It recognized that an appearance before the Board was a condition precedent to the Tax Tribunal's jurisdiction but found that the city's violation of the statute prevented the taxpayer from satisfying that condition precedent.[71] The Court relied on the Michigan Supreme Court case, *Burnside*, for determining what relief was available to ensure the taxpayer had an opportunity to be heard in such a scenario.[72]

In *Burnside*, this Court considered the protest requirement under MCL 205.735(1). There, the taxpayer did not receive notice of the increased assessment until after the Board of Review

[66] *Parkview*, 183 Mich App at 119-121 and other opinions discussed at pp 22-24; see also *Burnside*, 402 Mich at 950l.
[67] *SIXAR*P; slip op at 7-12.
[68] 183 Mich App at 117-120.
[69] *Id*. at 118.
[70] *Id*. at 121-122.
[71] *Id*. at 118-120.
[72] *Id*. at 119-121, citing *Burnside*, 402 Mich 950l.

RECEIVED by MSC 10/31/2023 3:28:15 PM

concluded its meetings.[73] The taxpayer initially filed a suit in a circuit court; however, by stipulation of the parties, the case was transferred to the Tax Tribunal.[74] The Tax Tribunal dismissed the petition on grounds that it lacked jurisdiction because the taxpayer had not first protested the matter to the Board of Review.[75] On appeal, the Court of Appeals recognized that the taxpayer was entitled to notice of the increased assessment and its appeal rights under MCL 211.24c; it emphasized how "[i]t is necessary to give full effect to the notice statute" to ensure a taxpayer's "opportunity to be heard [is not] foreclosed" due to noncompliance with a notice statute and so that the "the purpose of the statute [is] achieved."[76] Despite this, the Court found the Tax Tribunal was without jurisdiction to hear the appeal due to the protest requirement not having been satisfied.[77] The Michigan Supreme Court swiftly reversed, finding that the Tax Tribunal indeed had jurisdiction despite the protest requirement, and remanded the case to the Tax Tribunal with instructions that if "a notice should have been sent, the assessment increase is invalid . . . ."[78]

Faced with similar circumstances involving a taxing authority's failure to comply with a notice statute, the Court of Appeals in *Parkview* adopted this Court's remedial approach:[79]

> We adopt the Supreme Court's approach in *Burnside* here. Respondents' notices of assessment were sent in violation of MCL 211.24c(5) . . . . . [T]axpayers[,] . . . who demonstrate that they have been deprived of notice of an assessment in time to protest before the board of review [must be afforded] an opportunity to a review of the assessment of the Tax Tribunal.

---

[73] *W & E Burnside, Inc v Bangor Twp*, 77 Mich App 618, 619; 259 NW2d 160 (1977), rev'd 402 Mich 950l (1978).
[74] *Id*.
[75] *Id*.
[76] *Id*. at 623-624.
[77] *Id*. at 624-625.
[78] *Burnside*, 402 Mich at 950l.
[79] 183 Mich App at 120-121.

RECEIVED by MSC 10/31/2023 3:28:15 PM

The Court then ordered the Tax Tribunal to assume jurisdiction over the petitioners' assessment disputes.[80] Despite having been decided in April 1990, *Parkview* remains good law with "precedential effect under the rule of stare decisis" under MCR 7.215(C)(2). While a published opinion issued prior to November 1, 1990 under MCR 7.215(J)(1) is not strictly binding on subsequent panels of the Court of Appeals, it nevertheless continues to have "precedential effect" as a published opinion under MCR 7.215(C)(2) and can be relied on by the Court of Appeals.[81] Beyond that, *Parkview* is predicated on the Supreme Court opinion, *Burnside*, which is unquestionably binding precedent.[82]

C. *EDS* and its progeny do not conflict with the *Parkview* finding that the protest requirement under MCL 205.735a can be waived when a taxing authority does not comply with a notice statute.

The Township argues the Court of Appeals' reliance, in part, on *Parkview* creates a conflict with the holding in *EDS.* But that is simply not true. *First*, this case is interpreting MCL 211.9m, not MCL 205.735a. *Second*, neither *EDS* nor any of its progeny address the fact scenario of a taxing authority providing deficient notice, as was the case here and in *Parkview*.

In *EDS*, the taxpayer filed its petition to the Tax Tribunal two days late.[83] The Tax Tribunal dismissed the petition on grounds that it lacked jurisdiction under MCL 205.735(3). On appeal, the Court of Appeals affirmed, finding the "time requirements contained in MCL 205.735(2) are

---

[80] *Id*. at 121-122.

[81] *Schaumann-Beltran v Gemmete*, 509 Mich 979, 980 n 1; 973 NW2d 308 (2022) (finding no error by the Court of Appeals in its reliance upon a published opinion despite it having been issued prior to November 1, 1990); see also *Bomba v Bazakis*, 342 Mich App 144, 153 n 4; 992 NW2d 673 (2022) (emphasizing "[a]ll of our published decisions have precedential effect under the rule of stare decisis") (citation omitted). The Court of Appeals relied on *Legacy Custom Builders, Inc v Rogers*, ___ Mich App ___; ___ NW2d ___ (2023) (Docket No. 359213), as grounds for following the approach adopted in *Parkview*. *SIXARP*; slip op at 11 n 1. A copy of *Legacy Custom Builders, Inc* is at **MSC App. B, 013a-022a**.

[82] *VHS Huron Valley Sinai Hosp v Sentinel Ins Co*, 322 Mich App 707, 713 n 3; 916 NW2d 218 (2018), lv den 508 Mich 924 (2021) (citation omitted).

[83] 253 Mich App at 540.

RECEIVED by MSC 10/31/2023 3:28:15 PM

jurisdictional in nature."[84] There was no allegation the lateness was due to any action or inaction of the taxing authority.[85]

The same is true with respect to the rest of the opinions cited by the Township. In *W A Foote Mem'l Hosp v City of Jackson*,[86] the taxpayer's petition to the Tax Tribunal was filed late, like the taxpayer in *EDS.* The Court in *W A Foote Mem'l Hosp* followed *EDS* in holding because the petition was late, the Tax Tribunal did not have jurisdiction.[87] Like in *EDS*, there was no allegation the lateness was due to any action or inaction of the taxing authority.[88]

Likewise, *Strata Oncology Inc v Dep't of Treasury* (*Strata*)[89] is inapposite, although deemed by the Township as "[p]erhaps most telling of the conflict."[90] In *Strata*, the Department of Treasury claimed that the Tax Tribunal lacked jurisdiction on grounds that the petitioner was first required to pay the uncontested portion of the assessment prior to seeking relief before the Tax Tribunal pursuant to MCL 205.22.[91] The Court of Appeals disagreed with the taxing authority, finding the Tax Tribunal did have jurisdiction because the petitioner had challenged the entire assessment in its petition and, thus, was not required to make any payment under the statute.[92] Indeed, ***none*** of the "host of cases" cited by the Township as *EDS*'s progeny involve an allegation that defective notice by the taxing authority impacted the taxpayer's ability to appear before the Board of Review.[93]

---

[84] *Id*. at 543.
[85] *Id*. at 542-551.
[86] 262 Mich App 333; 686 NW2d 9 (2004).
[87] *Id*. at 340.
[88] *Id*. at 336-344.
[89] *Strata Oncology Inc v Dep't of Treasury*, __ Mich App __; __ NW2d __ (2023).
[90] Township's Application, p 1.
[91] *Strata*, at *8.
[92] *Id*. at *11-12.
[93] See *Mikelonis v Alabaster Twp*, 307 Mich App 606, 608; 861 NW2d 354 (2014); *Grimm v Dep't of Treasury*, 291 Mich App 140, 144; 810 NW2d 65 (2010); *In re Petition of Wayne*

RECEIVED by MSC 10/31/2023 3:28:15 PM

The Township discusses two unpublished opinions of the Court of Appeals that cite to both *EDS* and *Parkview*: *Pacific Props* and *Jehovah*.[94] In *Pacific Props*, the Court held the Tax Tribunal had jurisdiction under a different statute, MCL 211.53a, so the discussion about *Parkview* and MCL 205.735 is *dicta*.[95] More importantly, like the other cases cited by the Township, *Pacific* did not involve an allegation defective notice by the taxing authority impacted the taxpayer's ability to appear before the Board of Review.

Likewise, *Jehovah* is inapposite. There, the petitioner relied on *Parkview* to support its claim that the respondent's failure to send notice of assessments amounted to a due process violation for which its untimely filing of a petition with the Tax Tribunal should be excused. The Court, however, found the "lack of notice of assessments did not impact petitioner's ability to timely file a petition," as there was no dispute that the petitioner still failed to timely file the petition after it received a forfeiture notice.[96] Indeed, the logical conclusion of the Court's finding is that the petitioner would have been permitted to proceed with its petition, despite not having appeared before the board of review, if it had timely filed its petition upon learning of the forfeiture.

Co Treasurer, 286 Mich App 108, 114; 777 NW2d 507 (2009); *Leahy v Orion Twp*, 269 Mich App 527, 532; 711 NW2d 438 (2006); *Pacific Props v Shelby Twp* (*Pacific Props*), unpublished per curiam opinion of the Court of Appeals, issued March 1, 2005 (Docket No. 249945) at 11; and *Jehovah Shalom Church of God v City of Detroit* (*Jehovah*), unpublished per curiam opinion of the Court of Appeals, issued April 23, 2020 (Docket No. 248320) at 12.

[94] See footnote 93.

[95] *Pacific Props*, at *11-16.

[96] *Jehovah*, at *14-15.

RECEIVED by MSC 10/31/2023 3:28:15 PM

D. The Court of Appeals has consistently – and without exception – waived the Board of Review requirement in instances of deficient notice by the taxing authority.

The Court of Appeals found two unpublished opinions, *Mich State Univ v City of Lansing* (*MSU*),[97] and *Morehouse v Twp of Mackinaw*,[98] "persuasive." The Court noted *MSU* and *Morehouse* followed the holding of *Parkview* (and, thereby, this Court's remedial approach in *Burnside*) to "support the principle that in instances of inadequate notice, this Court may waive the protest requirement and allow the case to proceed before the MTT."[99] Regarding those cases, the Court noted:[100]

> In *Morehouse*, the petitioners did not receive notice until after the Board of Review met. *Morehouse*, unpub op at 3-4. Following *Parkview*, the *Morehouse* Court affirmed the MTT's decision to hear the case, despite the petitioners' failure to first appeal to the Board of Review. *Id*. at 4. Similarly, in *Mich State Univ*, this Court concluded there was "no evidence to contradict MSU's position" that the notice of assessment "was actually received" after the deadline for it to protest to the Board of Review. *Mich State Univ*, unpub op at 3. The *Mich State Univ* Court affirmed the MTT's exercise of jurisdiction and, citing *Parkview*, concluded that "[i]f a taxing authority can avoid board and tribunal review of assessments by mailing untimely notices, a property owner's due process rights are unquestionably impaired."

Notably, in *MSU*, the Court of Appeals addressed how *EDS* and its progeny found the requirements under MCL 205.735 to be jurisdictional; but the Court of Appeals in *MSU* found those opinions inapplicable.[101] Instead, the Court found *Parkview* to be "directly and more on point" because "it specifically addresses the failure to provide timely notice that would have

---

[97] *MSU v City of Lansing*, unpublished per curiam opinion of the Court of Appeals, issued February 15, 2005 (Docket No. 250813), **COA App. W, 183a-188a**.

[98] *Morehouse v Twp of Mackinaw*, unpublished per curiam opinion of the Court of Appeals, issued March 17, 2009 (Docket No. 281483), **COA App. X at 189a-192a**.

[99] *SIXARP*; slip op at 12, citing *Barclae v Zarb*, 300 Mich App 455, 469; 834 NW2d 100 (2013).

[100] *Id*. at 5.

[101] *MSU*, at *11-12, **COA App. W, at 186a-186a**. Moreover, the Court of Appeals in *Morehouse* found *EDS* "distinguishable from the case at hand" because "the notice at issue was that received by the tribunal, not by the taxpayer." *Morehouse*, at *6-7, **COA App. X, at 190a-191a**. This distinction is precisely why the Township's argument fails; none of the cases cited by the Township involved the timing and adequacy of statutory notice received by a taxpayer.

RECEIVED by MSC 10/31/2023 3:28:15 PM

allowed a party to meet the requirements of MCL 205.735." [102] The Court in *MSU* emphasized *Parkview* remains "compelling" and was "predicated on a Supreme Court decision [*Burnside*] which is, of course, binding precedent that trumps opinions emanating from this Court."[103]

In *Morehouse*, the Court of Appeals again adopted and followed the approach in *Parkview* "in order to protect petitioners' due process rights and consistent with *Burnside.*"[104] The Court followed *Parkview* even though it took exception to "that portion of *Parkview*'s analysis that concludes the requirements of MCL 205.735 are procedural, not jurisdictional."[105] The *Morehouse* opinion accordingly finds another path to harmonizing *Parkview* and *EDS*.

The Township argued "[a] much smaller number of cases cite *Parkview*," referencing only *MSU* and *Morehouse*. But the Township was simply wrong. At least five other Court of Appeals cases cite positively to *Parkview* for the holding "defective notice" deprives a taxpayer of the right to be heard: *Craig v County of Grand Traverse*, unpublished per curiam opinion of the Court of Appeals, issued April 16, 2019 (Docket No. 342780);[106] *Half Pipe, LLC v Twp of Livingston*, unpublished per curiam opinion of the Court of Appeals, issued April 25, 2017 (Docket No. 329197);[107] *Abundant Life Christian Ctr v Redford Charter Twp*, unpublished per curiam opinion of the Court of Appeals, issued August 1, 2013 (Docket No. 310713), lv den 495 Mich 903 (2013);[108] *Schellenberg v Bingham Twp*, unpublished per curiam opinion of the Court of Appeals, issued May 11, 2010 (Docket No. 289801), lv den 488 Mich 871 (2010), recon den 488 Mich 997

[102] *MSU*, at *12, **COA App. W, at 186a**
[103] *Id*.
[104] *Morehouse*, at *9, **COA App. X, at 191a.**
[105] *Id*.
[106] A copy of *Craig* is attached as **MSC App. C, 023a-026a**.
[107] A copy of *Half Pipe, LLC* is attached as **MSC App. D, 027a-28a**.
[108] A copy of *Abundant Life Christian Ctr* is attached as **MSC App. E, 029a-033a**.

RECEIVED by MSC 10/31/2023 3:28:15 PM

(2010);[109] and *Biltmore Wineman, LLC v Northville Twp*, unpublished per curiam opinion of the Court of Appeals, issued January 24, 2003 (Docket No. 233901), lv den 468 Mich 941 (2003).[110]

The Court of Appeals panel that decided the opinion below was certainly not the first panel of the Court to find *Parkview* persuasive.

E. This Court's opinion in *Highland-Howell* reaffirms the remedial approach and waiver of the protest requirement.

The Township's reliance on *Highland-Howell Dev Co, LLC v Twp of Marion* (*Highland-Howell*)[111] is misplaced. The Township tries to invoke *Highland-Howell* to make a distinction between the provision of *no notice* as compared to the provision of *inadequate notice*. Yet, *Highland-Howell* does not support making this distinction.

In *Highland-Howell*, a property owner protested a special assessment directly to the Michigan Tax Tribunal without first protesting at a special assessment hearing.[112] MCL 205.735, at that time, stated that "the special assessment must be protested at the hearing held for the purpose of confirming the special assessment roll ***before the tribunal acquires jurisdiction of the dispute***." The special assessment plan, finalized in 1996, included a sanitary sewer trunk line running across the owner's property.[113] Many years later, in 2004, the township passed a resolution changing the plan and eliminating the line on the owner's property.[114] The owner filed a petition with the Tax Tribunal within 30 days of the resolution under MCL 205.735(2).[115]

The Michigan Supreme Court held that the jurisdictional prerequisite of first protesting at a special assessment hearing was impossible, because the owner did not have a reason to protest

---

[109] A copy of *Schellenberg* is attached as **MSC App. F, 034a-037a**.
[110] A copy of *Biltmore Wineman, LLC* is attached as **MSC App. G, 038a-041a**.
[111] *Highland-Howell Dev Co, LLC v Twp of Marion*, 478 Mich 932; 733 NW2d 761 (2007).
[112] *Id*. at 932.
[113] *Id*.
[114] *Id*. at 933.
[115] *Id*.

RECEIVED by MSC 10/31/2023 3:28:15 PM

when the hearing was held in 1996.[116] The Supreme Court held that the Tax Tribunal had jurisdiction, despite the owner not complying with MCL 205.735(1), because "the statutes at issue here cannot be construed in a manner that would deny petitioner due process of law."[117] The Supreme Court held that because the owner filed its petition within 30 days, the Tax Tribunal was vested with jurisdiction under MCL 205.735(2).[118] In reaching this conclusion, the Michigan Supreme Court relied on *Burnside*, "in which this Court remanded the case to the tribunal to determine whether the petitioner was entitled to notice even though the protest requirement of § 735(1) was not satisfied."[119]

Highland-Howell presents another example of a property owner being permitted to proceed with an appeal before the Tax Tribunal, even though it did not protest a special assessment at a hearing, as required by MCL 205.735(1). There is no basis for making a distinction between no notice and deficient notice; in either event, the appearance before the Board of Review will be excused.

The instant case fits within the holdings of both *Burnside* and *Highland-Howell* and calls for waiver of the protest requirement, as Praxis was deprived of statutory notice and otherwise provided conflicting and/or insufficient information as to its appeal rights that prevented it from satisfying the protest requirement.

[116] *Id*.
[117] *Id*.
[118] *Id*.
[119] *Id*., citing *Burnside*, 402 Mich 950l (1978).

RECEIVED by MSC 10/31/2023 3:28:15 PM

II. The Township's failure to comply with the notice requirements under MCL 211.9m violated Praxis's due process rights.

"Fundamentally, due process requires that a party receive notice of the proceedings against it and a meaningful opportunity to be heard."[120] The United States Supreme Court has stated that in tax matters, states must provide sufficient procedural safeguards to satisfy due-process requirements because taxes can result in the deprivation of property.[121] To satisfy due process, a taxpayer must have "a fair opportunity to challenge the accuracy and legal validity of their tax obligation, but also a 'clear and certain remedy' for any erroneous or unlawful tax collection to ensure that the opportunity to contest the tax is a meaningful one."[122]

While the Township does not appear to dispute the necessity of ensuring taxpayers are afforded due process protection, it challenges whether the Court of Appeals has the authority to vest the Tax Tribunal with jurisdiction as a matter of equity when a taxing authority's failure to comply with a notice statute has deprived a taxpayer of due process. Yet, binding precedent of the Court of Appeals clearly holds that courts have "equitable power" to do just that when the circumstances presented require such a result in order to remedy the deprivation of due process rights.[123]

---

[120] *Duckett v Solky*, __ Mich App __; 991 NW2d 852, 861 (2022) (internal quotation marks and citation omitted).

[121] *McKesson Corp v Div of Alcoholic Bevs & Tobacco*, 496 US 18, 36; 110 S Ct 2238; 110 L Ed 2d 17 (1990).

[122] *Id*. at 39, quoting *Atchison T & SFR Co v O'Connor*, 223 US 280, 285; 32 S Ct 216; 56 L Ed 436 (1912).

[123] *Wells Fargo Rail Corp*, slip op at 11-12, **MSC App. A, at 011a-012a** (exercising its equitable power to toll the time for filing a petition in the Tax Tribunal in order to "preserve [the taxpayer's] right to judicial review"), citing *Ashley Ann Arbor, LLC v Pittsfield Charter Twp*, 299 Mich App 138, 155-156; 829 NW2d 299 (2012); see also *Parkview*, 183 Mich App at 120 (vesting the Tax Tribunal with jurisdiction to hear the taxpayers' claims despite having not satisfied the protest requirement or filing deadline, because the taxing authority's provision of defective notice denied the taxpayers of an opportunity to be heard).

RECEIVED by MSC 10/31/2023 3:28:15 PM

As recognized by the Court of Appeals in the instant case, Michigan courts typically reserve its use of equitable power for "unusual circumstances" where such power is necessary to avoid a "severe outcome" against a taxpayer.[124] Notably, another panel of the Court of Appeals recently recognized that "factual scenarios in which a government agency or the tribunal itself deprived the petitioner of notice or an opportunity to be heard" create "situations where the exercise of equity was proper in certain Tax Tribunal cases."[125]

Here, the Court of Appeals provided a detailed recounting of how the Township and its assessor issued a defective notice in violation of MCL 211.9m(3) and repeatedly acted in ways that denied Praxis an opportunity to protest and be heard:

> [T]he assessor failed to inform Praxis that it had to re-file its combined document to perfect its appeal before the Board of Review, as required under MCL 211.9m(3) and MCL 211.9n(3). There was also conflicting information about the Board's exact schedule, namely there was a question of whether it would meet on March 10, 2021, based on the posting in the Grand Rapids Press. And Baker, the assessor, never provided Praxis's representatives with the Board's schedule or the deadline for protesting to the Board of Review, despite multiple requests from them.

Based on the culmination of these facts, the Court of Appeals found Praxis's due process rights were violated, and the Court of Appeals exercised its powers of equity to remand the case to the Tax Tribunal with instructions to hear Praxis's petition.[126] Notably, the Court of Appeals found these *actions* denied Praxis due process, consistent with *Parkview*.[127] This is very different from the taxpayer's due process arguments in *EDS*, where the taxpayer argued *a statute* – MCL 205.735

---

[124] *SIXARP*; slip op at 13, citing *Wells Fargo Rail Corp*, at 11-12.
[125] *See Craig*, p 4, **MSC App. C, at 026a.** In *Craig*, the petitioners claimed the Tax Tribunal has equitable powers to waive filing deadlines under MCL 205.735a(6). *Id*. at 3. The Court of Appeals recognized that it has properly exercised equity where the taxing authority provided the taxpayer defective notice. *Id*. at 4. The Court however held "[t]hat is not what occurred here," finding "it is undisputed that [the petitioners] received notice, which adequately instructed them on how to appeal the decision." *Id*.
[126] *SIXARP*; slip op at 13.
[127] *Id*.

– violated due process.[128] This presents another reason *EDS* is distinguishable and not applicable here.

The Township seeks to ignore how its repeated failures came together to create a roadblock that deprived Praxis of a meaningful opportunity to protest the EMPP denial before the Board of Review. The Township notably never denies how its assessor issued a denial notice that did not fully comport with statutory requirements, and it also does not deny that the assessor failed to respond to Praxis's inquiries for basic information on when and how to appeal to the Board of Review. Indeed, to the contrary, the next tax year, 2022, the Township completely revamped the denial form, adding to it specific reasons for the denial, instructions about the procedure for appealing to the Board of Review that includes refiling the combined document, and dates, times, and location of the Board of Review meetings.[129]

Contrary to the Township's argument, the Court's opinion does not create a "vague and impossible" standard. Rather, the takeaway is simple: there will be a consequence if a taxing authority (1) fails to comply with its statutory obligations in its provision of notice to a taxpayer under MCL 211.9m(3), (2) publishes inaccurate and/or conflicting information in the community, and (3) ignores taxpayer requests for information on how to appeal. If the Township had provided the same notice given in 2022 to Praxis in 2021, this case never would have never transpired, as Praxis would have been given a fair opportunity to protest the denial to the Board of Review, which is exactly what happened when Praxis received the revised denial notice in 2022, and the Board of Review granted the exemption.

[128] *EDS*, 253 Mich App at 549.
[129] 2022 EMPP Denial, **COA App. G at 054a-055a**.

RECEIVED by MSC 10/31/2023 3:28:15 PM

RECEIVED by MSC 10/31/2023 3:28:15 PM

Conclusion

Praxis respectfully requests that this Court deny the Township's Application for Leave.

Date: October 31, 2023

Respectfully submitted,

NOVARA TESIJA CATENACCI
McDONALD & BAAS, PLLC

By: */s/ Jackie J. Cook*
Jackie J. Cook (P68781)
Kimberly A. Cloud (P76296)
Attorneys for Petitioner-Appellee
888 W. Big Beaver Road, Suite 600
Troy, MI 48084
(248) 354-0380
jjc@novaralaw.com

Certificate of Compliance

Pursuant to MCR 7.212(B)(3), I hereby certify that there are 9,234 words in Petitioner-Appellee's Answer, including headings, footnotes, citations and quotations contained in the Introduction, Counter-Statement of Facts, Argument and Conclusion sections of its Brief.

/s/ Jackie J. Cook
Jackie J. Cook