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STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT
On 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.

MSC No. 166190

COA No. 361888

Tax Tribunal No. 21-000523-TT

APPELLANT'S SUPPLEMENTAL BRIEF ON ITS APPLICATION FOR LEAVE TO APPEAL

ORAL ARGUMENT REQUESTED

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May 22, 2024

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STATEMENT OF JURISDICTION

Respondent-Appellant Byron Township filed an application on October 3, 2023 for leave to appeal the Michigan Court of Appeals' August 22, 2023 decision in *Sixarp, LLC d/b/a Praxis Packaging Solutions v Byron Twp*.[1] On April 10, 2024 this Court exercised its jurisdiction by issuing an order in which it stated that this application is "considered," directed "the Clerk to schedule oral argument," and directed the parties to file supplemental briefs on three specific issues addressed herein.

[1] *Sixarp, LLC d/b/a Praxis Packaging Solutions v Byron Twp,* ____ Mich App ___; ___ NW2d ___ (2023) (COA Docket No. 361888). As of the date of filing of this Supplemental Brief, this decision has not yet been published but was designated as "for publication." A copy is attached to this filing as Appendix 1. The Michigan Tax Tribunal decision (Final Opinion and Judgment) is attached as Appendix 2.

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ISSUES REQUESTED BRIEFED BY THIS COURT

I. Whether the assessor's denial of Petitioner-Appellee's request for exemption as eligible manufacturing personal property satisfied the requirements of MCL 211.9m(3) and 211.9n(3) and/or due process?

Appellant:	Yes
Appellee:	No
Michigan Tax Tribunal:	Yes
Michigan Court of Appeals	No

II. If Issue I is answered in the negative, whether the denial notice's failure to satisfy those requirements relieved Petitioner-Appellee of the requirement to protest the denial at the 2021 March Board of Review?

Appellant:	No
Appellee:	Yes
Michigan Tax Tribunal:	No
Michigan Court of Appeals:	Yes

III. Can the Michigan Tax Tribunal exercise jurisdiction over this case?

Appellant:	No
Appellee:	Yes
Michigan Tax Tribunal:	No
Michigan Court of Appeals:	Yes

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STATEMENT OF FACTS

The facts presented below are limited to those relevant to the three questions for which this Court requested supplemental briefing in connection with this application for leave to appeal. This case arises out of the attempt by Petitioner-Appellee Sixarp, LLC d/b/a Praxis Packaging Solutions ("Praxis"[2]) to have certain of its personal property located in Byron Township declared exempt from taxation as Eligible Manufacturing Personal Property ("EMPP") under MCL 211.9m and/or MCL 211.9n for the 2021 tax year.[3] In early February 2021, Praxis filed Michigan Department of Treasury ("Treasury") form 5278 with Respondent-Appellant Byron Township ("Township") requesting that the exemption be granted.[4] On February 9, 2021, Township's assessor denied the exemption request using another Treasury form, titled Assessor Denial of Request for Exemption as Eligible Manufacturing Personal Property ("Assessor Denial").[5]

Township's 2021 March board of review ("March board") met on March 2, 2021 for its organizational meeting, followed by meetings on March 8th and 9th to hear taxpayer petitions, and closed on the evening of March 9, 2021.[6] Praxis did not appear before the 2021 March board; rather, an untimely filing was emailed to the assessor on March 10, 2021 at 6:39 PM by Lisa Pohl, a third party tax professional retained by Praxis to handle an appeal of the EMPP exemption

[2] "Praxis" was the designation assigned by the Court of Appeals and that designation will be continued here for clarity.

[3] The statutes are functionally the same with the exception that 9m refers to "qualified new" property while 9n refers to "qualified previously existing" property. The statutes function in tandem to provide exemption from ad valorem taxation for certain eligible manufacturing personal property or "all personal property located on occupied real property if that personal property is predominantly used in industrial processing or direct integrated support." MCL 211.9m(6)(c).

[4] Township's Motion for Summary Disposition, Exhibit B, Tribunal docket lookup line item 19.

[5] *Id*.

[6] *Id*. at Exhibit C.

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denial.[7] On March 11, 2021 the assessor responded to the email and noted that "the March [b]oard . . . adjourned at 9:00 pm on 3/9/2021."[8] Praxis' untimely filing was not heard by the March board.[9]

The Failure to Appeal to the March board. Township provided Praxis multiple timely notices well in advance of the meeting of the 2021 March board and informed Praxis of the need to first appeal the Assessor Denial to that body for the Michigan Tax Tribunal ("Tribunal") to have subject-matter jurisdiction if a further appeal was pursued. The Assessor Denial stated that:

> A taxpayer who timely and properly filed form 5278 may appeal an assessor's denial of the EMPP exemption to the March Board of Review under MCL 211.30....
>
> Filing a protest with the Board of Review is necessary to protect your right to further appeal an EMPP exemption dispute to the Michigan Tax Tribunal.[10]

Township also timely sent Praxis, via mail, a Notice of Assessment reflecting the rejection of the exemption and the deadlines and requirements for pursuing an appeal to the March board. That Notice stated, in part:

> IF YOU BELIEVE THESE VALUES ARE INCORRECT YOU MAY APPEAL TO THE BOARD OF REVIEW WHICH WILL MEET MARCH 8 FROM 9:00 A.M. TO NOON, AND FROM 1 P.M. TO 5 P.M. MARCH 9 FROM 1:00 P.M. TO 5:00 P.M. AND FROM 6 P.M. TO 9 P.M. TO APPEAL THESE VALUES, CALL 616-878-6033 BEFORE MARCH 5 FOR AN APPOINTMENT WITH THE BOARD OF REVIEW. MEETINGS CAN BE ATTENDED EITHER IN PERSON, VIRTUAL, OR BY LETTER APPEAL. PETITION FORMS MUST BE COMPLETED AND ARE AVAILABLE AS IN THE PARAGRAPH ABOVE. LETTER APPEALS MUST BE RECEIVED BY MARCH 5, 2021. THE BOARD OF REVIEW MEETS IN THE TOWNSHIP HALL AT 8085 BYRON CENTER AVE....[11]

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[7] *Id*. at Exhibit H.
[8] *Id*. at Exhibit I.
[9] *Id*. at Exhibit C.
[10] *Id.* at Exhibit B.
[11] *Id.* at Exhibit F.

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The 2021 March board meeting schedule was also posted on Township's website and at Township Hall beginning February 1, 2021 through the final meeting date.[12]

Praxis argued before the Tribunal that Township "did not provide **any** Board meeting dates or otherwise provide the requisite information that a taxpayer would need in order to perfect an appeal to the Board . . . ."[13] That assertion is simply untrue. Praxis never denied receiving the Assessor Denial or the Notice of Assessment and, indeed, had retained a tax professional to appeal to the 2021 March board—Lisa Pohl—who had contacted Township's assessor before the 2021 March board closed.[14] A February 26, 2021 email disclosed by Praxis in discovery from its finance controller to Lisa Pohl reveals that — two weeks before the March board meetings — the controller "spoke with [Township's assessor] at the Byron [T]ownship office and he suggested that we submit a letter for the appeal instead of going in person."[15] As the email was dated two weeks after the Assessor Denial was issued, the appeal referenced could logically only involve the 2021 March board.[16]

The Court of Appeals extensively discussed a notice posted in the Grand Rapids Press on February 21, 23, and 25, 2021 that erroneously stated, in one section, that the March board would meet on March 8, 9, and 10, 2021 but only provided specific meeting times for March 8th and 9th.[17] Praxis never referenced the Grand Rapids Press posting in its Motion for Summary Disposition or in its response to Township's Motion for Summary Disposition. Indeed, Praxis

[12] *Id.* at Exhibits E & D.

[13] Praxis' Motion for Partial Summary Disposition at p. 20, Tribunal docket lookup line item 20.

[14] Appendix 2 at 10-11, 13-14.

[15] Township's Answer in Opposition to Petitioner's Motion for Summary Disposition, Exhibit I, Tribunal docket lookup line item 27.

[16] *Id.*

[17] Appendix 1 at 5, 11, 13.

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never indicated to the Tribunal that Praxis was even aware of the Grand Rapids Press posting or relied on said posting in any way. Indeed, the Grand Rapids Press posting was not introduced into the record by Praxis but by Township.[18] Praxis actually argued that "[w]hether or not the dates of the [March] board's meetings were contained in public postings *is irrelevant*."[19] The first time Praxis raised the Grand Rapids Press posting was in its Court of Appeals' reply brief, where Praxis acknowledged that it had no knowledge of the existence of those specific postings during the relevant proceedings.

Praxis filed its appeal with the Tribunal on April 13, 2021—63 days after the Assessor Denial was issued.[20]

Tribunal. On April 12, 2022, the Tribunal granted Township's Motion for Summary Disposition pursuant to MCR 2.116(C)(4), finding that Praxis' failure to timely protest the Assessor Denial to the 2021 March board "deprives the Tribunal of any jurisdiction."[21] Addressing Praxis' due process argument that "it was not provided appropriate notice of the times and dates at which the [March board] would meet," the Tribunal "disagrees as this information was explicitly stated under 'March 2021 Board of Review Information' provided to [Praxis] on the Notice of Assessment. Specifically, that notice indicates that the [March board] will meet at certain specific times on March 8 and March 9."[22]

Praxis argued before the Tribunal that the Assessor Notice was defective and did not comply with due process because it did not inform Praxis that, in order to perfect an appeal to the

[18] Township's Motion for Summary Disposition, Exhibit G, Tribunal docket lookup line item 19.

[19] Praxis' Response to Township's Motion for Summary Disposition at p. 8, Tribunal docket lookup line item 28 (emphasis added).

[20] Petition, Tribunal docket lookup line item 2.

[21] Appendix 2 at 16.

[22] *Id*. at 11-12.

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March board, Praxis was required to file a "combined document."[23] The Tribunal rejected Praxis' due process arguments. The untimely filing "was not considered [by the March board] because it was not timely filed, not because [Praxis] failed to file the combined document."[24] While the Assessor Denial did not explicitly state that a combined document needed to be filed with the March board, this did not result in Praxis being "deprived of any rights as a result."[25] Indeed, "taken as a whole, [Township] did not deprive [Praxis] of any meaningful opportunity to appeal to the [March board] and therefore did not deprive [Praxis] of its due process rights."[26] In light of the timely issued Assessor Denial, the lack of a due process issue, and the failure to appeal to the March board, the Tribunal concluded it did not have jurisdiction and dismissed the case.[27] Praxis sought reconsideration of the dismissal but its request for reconsideration was denied on May 31, 2021.[28] Notably, Praxis never contested the Tribunal's finding that the Notice of Assessment contained the correct March board dates or that Praxis actually received the Notice of Assessment, either in its Motion for Summary Disposition or in its Motion for Reconsideration.[29]

Court of Appeals. The Michigan Court of Appeals reached a different conclusion as to the alleged due process issues and the Tribunal's jurisdiction. The Court of Appeals read three elements into MCL 211.9m(3) and 211.9n(3) that required the Assessor Denial to notify Praxis "(1) in writing (2) of the reason for the denial and (3) advising Praxis that the denial had to be appealed to the March Board of Review . . . by filing a combined document" referenced in MCL

[23] Pursuant to MCLs 211.9m(2)(a) and 211.9n(2)(a) the combined document is a form issued by Treasury. For the years at issue, it was known as Form 5278.
[24] Appendix 2 at 11.
[25] *Id*.
[26] *Id*. at 12.
[27] *Id*. at 14.
[28] Order Denying Motion for Reconsideration, Tribunal docket lookup line item 37.
[29] *Id*.

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211.9m(2) and n(2).[30] The Assessor Denial met requirements (1), (2), and (3) insofar as the Assessor Denial indicated a March board protest was a condition precedent to a Tribunal appeal, and included the statute that governed when the March board could meet.[31] While the Assessor Denial indicated documentation needed to be filed with the March board to appeal the Assessor Denial, it did not explicitly specify that said documentation needed to include a combined document.[32] As found by both the Tribunal and the Court of Appeals, however, the omission of the combined document language did not deprive Praxis of any rights as the issue was not that Praxis filed the wrong document; rather, the issue was that Praxis attempted to protest to the 2021 March board after it closed.[33]

The Court of Appeals, however, reversed the Tribunal's dismissal for lack of jurisdiction based on the finding that Praxis did "present evidence suggesting that it received no information about the Board of Review's meeting schedule from [the Assessor Denial], and that Byron Township published conflicting information about that schedule."[34] Specifically, the Court of Appeals observed that the Assessor Denial itself did not indicate the dates the March board would meet, that the Notice of Assessment indicated an appointment with the March board must be set by March 5th, and that the Grand Rapids Press posting indicated the March board may meet on March 10, 2021. Leaving undisturbed the finding that the March 10, 2021 letter appeal was untimely and that Praxis had notice of the Assessor Denial well before the 2021 March board met for the first time, the Court of Appeals held that "in instances of inadequate notice, this Court may

[30] Appendix 1 at 9.
[31] *Id*. at 10.
[32] *Id*.
[33] *Id*. ("This was an accurate finding . . ."); Appendix 2 at 13.
[34] Appendix 1 at 11.

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waive the protest requirement before the Board of Review and allow the case to proceed before the [Tribunal]."[35]

This finding was based on a published Court of Appeals' decision from April 1990, *Parkview Mem Ass'n v Livonia*.[36] The Court also cited *Morehouse v Mackinaw Twp* and *Mich State Univ v Lansing*, two unpublished decisions, that "followed *Parkview*" and were found to be "persuasive."[37] Read together with the Grand Rapids Press posting that allegedly "created confusion about the days on which the Board of Review would meet," the Court of Appeals found it had the power to waive the Tribunal's jurisdictional requirements and ordered that, on remand, the case should "proceed as if the protest requirement were satisfied."[38]

The Court further addressed Praxis' due process arguments. Holding that while MCL 211.9m and n "on their face, comport with due process . . . Byron Township failed to comply with the obligations imposed by the statutes and, therefore, it deprived [Praxis] of due process."[39] The remedy was to allow "the [Tribunal] to hear this case as a matter of equity, despite [Praxis'] failure to first protest to the Board of Review."[40]

This application for leave to appeal followed.

INTRODUCTION

The three issues this Court asked to be addressed in supplemental briefing go to the heart of a conflict in Michigan's jurisprudence—a conflict that has been acknowledged by the Court of

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[35] *Id*. at 12.
[36] 183 Mich App 116; 454 NW2d 169 (1989).
[37] Appendix 1 at 12; *Morehouse v Mackinaw Twp,* unpublished per curiam opinion of the Court of Appeals, issued March 17, 2009 (Docket No. 281483); *Mich State Univ v Lansing*, unpublished per curiam opinion of the Court of Appeals, issued February 15, 2005 (Docket No. 250813). These cases are included because they were relied on by the Court of Appeals. MCR 7.215(C)(1).
[38] Appendix 1 at 12.
[39] *Id*. at 13.
[40] *Id*.

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Appeals, the Tribunal, and the Sixth Circuit Court of Appeals. That conflict being whether the Tribunal's jurisdictional statutes, strict deadlines, and protest requirements are applied based on their plain language, or are malleable and can be bent, modified, or even waived.

The newer line of cases, led by *Electronic Data Systems Corp v Flint Twp*, holds that the Tribunal's jurisdiction is strictly defined and cannot be modified.[41] The older line of cases led by *Parkview Mem Ass'n v Livonia*, holds that the Tribunal's jurisdiction is not so concrete.[42] The Michigan Court of Appeals acknowledged that it "has been inconsistent when interpreting whether the prerequisites to the Tax Tribunal's acquisition of jurisdiction stated under MCL 205.735 implicated subject-matter jurisdiction—and therefore could not be waived or forfeited—or were merely procedural and could be waived or forfeited."[43] The Sixth Circuit Court of Appeals agreed that "[t]here is simply no clear, direct, published holding from the Michigan Court of Appeals or the Michigan Supreme Court that statutory jurisdictional requirements for the Michigan Tax Tribunal will be waived to remedy denials of due process."[44] In this case, the Court of Appeals relied on *Parkview*. In *Strata Oncology Inc v Dep't of Treasury*, the Court of Appeals relied on *Electronic Data*.[45] Both involved published opinions issued 30 days apart.

The Court of Appeals embraced two erroneous findings in this case. First, it found a due process issue where there was none. The facts of this case clearly establish that Praxis had more than adequate notice and opportunity to be heard when all the facts in the record are considered. Second, the Court resurrected the premise of malleable Tribunal jurisdiction set forth in *Parkview*

[41] 253 Mich App 538; 656 NW2d 215 (2002).
[42] *Parkview Mem Ass'n*, 183 Mich App at 116.
[43] *New Covert Generating Co v Covert Twp*, 334 Mich App 24, 50; 964 NW2d 378 (2020).
[44] *Howard v City of Detroit*, 40 F4th 417, 427 (CA 6, 2022).
[45] *Strata Oncology, Inc v Dep't of Treasury*, ____ Mich App ___; ___ NW2d ___ (2023) (COA Docket No. 362431). As of the date of filing of this Supplemental Brief, this decision has not yet been published, but was designated as "for publication."

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and imbued the Tribunal with equitable powers when there was no precedential or statutory basis to do so. The heart of this case is a failure to timely appeal despite notice and opportunity to do so. The Assessor Denial was timely issued, a March board protest was required and not made, and the Tribunal properly dismissed for lack of jurisdiction; however, the issues caused by the resurrection of *Parkview* and the empowering of the Tribunal with equitable powers and flexible jurisdiction go beyond the due process claims and facts of this case and should be rejected by this Court.

STANDARD OF REVIEW

The standard of review that controls the Court's review is contained in Section 28 of Article VI of the Michigan Constitution, which provides:

> All final decisions, finding, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law . . . .
>
> In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation. [Const 1963, art 6, § 28.]

Thus, appellate review of a decision of the Tribunal is "very limited."[46] Absent an allegation of fraud (no fraud is alleged here), an appellate court must limit its review to whether the Tribunal committed an error of law or adopted a wrong legal principle.[47] Moreover, an

[46] *President Inn Props, LLC v City of Grand Rapids*, 291 Mich App 625, 630; 806 NW2d 342 (2011); *Fradco, Inc v Dep't of Treasury*, 495 Mich 104, 112; 845 NW2d 81 (2014).

[47] *Liberty Hill Housing Corp v Livonia*, 480 Mich 44, 49; 746 NW2d 282 (2008); *Wexford Medical Group v City of Cadillac*, 474 Mich 192, 201; 713 NW2d 734 (2006); *Wayne County v Michigan State Tax Commission*, 261 Mich App 174, 186; 682 NW2d 100 (2004).

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appellant bears the burden of proof in an appeal from a decision of the Tribunal.[48] "The goal of statutory interpretation is to give effect to the Legislature's intent as determined from the language of the statute."[49] In interpreting statutes, this Court must "give the words of a statute their plain, ordinary meaning unless the Legislature employs a term of art."[50]

ARGUMENT

I. PRAXIS DUE PROCESS RIGHTS WERE SATISFIED REGARDLESS OF ANY ALLEGED TECHNICAL DEFICIENCY WITH THE ASSESSOR DENIAL.

The Assessor Denial. MCLs 211.9m and n contain identical language in subsection (3). Language that provides that when an EMPP exemption application is "incomplete" or the assessor does not believe the property qualifies for the exemption, then the assessor "may deny that claim for exemption . . . ."[51] The denial is done 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)."[52]

In this case, the Township assessor used the official Treasury form, Assessor Denial, that satisfied the requirement that the denial be in writing.[53] The form indicated that the denial was based on the Township assessor's belief that the property "does not meet the definition of" EMPP and further advised Praxis that the denial could be appealed to "the March Board of Review under MCL 211.30."[54] The Assessor Denial did not explicitly mention a combined statement, but as

[48] *Podmajersky v Dep't of Treasury*, 302 Mich App 153; 162 NW2d 195 (2013).
[49] *Bukowski v City of Detroit*, 478 Mich 268, 273; 732 NW2d 75 (2007).
[50] *Id.* at 274.
[51] MCL 211.9m(3); MCL 211.9n(3).
[52] MCL 211.9m(3); MCL 211.9n(3).
[53] Appendix 1 at 10.
[54] *Id.*

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found by the Tribunal, Praxis "was advised that the appeal needed to be made in writing, not verbally."[55]

Township does not dispute that the specific language regarding the combined document was omitted from the Assessor Denial; however, relying on this specific detail of the case to find that Praxis was deprived of due process—and, consequently, allowed to bypass the March board and appeal directly to the Tribunal—misses the forest for the trees. First, the issue in this case was *not* the absence of a combined document in Praxis' March 10, 2021 email submission to the assessor. The issue was that the March board closed on March 9, 2021 and Praxis emailed Township's assessor on the evening of March 10, 2021.[56] Second, a conclusion that Praxis was denied due process ignores the evidence in the record—and the Tribunal's finding, undisturbed on appeal—that Praxis had actual knowledge of when the March board was meeting through other documentation and notices sent and posted by Township. Indeed, Praxis hired a tax professional who was informed of the March board meetings by Praxis at least two weeks before the meetings took place. The analysis properly begins with the Assessor Denial, but it should not end there when other evidence irrefutably shows that Praxis had received notice through several other means.

Due Process. Under the facts of this case, Praxis' due process rights were satisfied. As a property right is involved in this case, due process applies and Praxis must be afforded "notice of the proceedings and a meaningful opportunity to be heard."[57] "[D]ue process is flexible and calls for such procedural protections as the particular situation demands."[58] The State is, however, "afforded great flexibility in satisfying the requirements of due process in the field of taxation."[59]

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[55] Appendix 2 at 13.
[56] *Id*. at 12.
[57] *Wells Fargo Rail Corp v State of Michigan*, 344 Mich App 315; 1 NW2d 373 (2022).
[58] *Morrissey v Brewer*, 408 US 471, 481 (1972).
[59] *By Lo Oil Co v Dep't of Treasury*, 267 Mich App 19, 29; 703 NW2d 822 (2005).

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This is "because of the significant interest states have in their own financial stability" and the "substantial governmental interest in the prompt and efficient collection of taxes."[60]

The record establishes that Praxis had actual knowledge of the March board dates. The Tribunal found that the Notice of Assessment received by Praxis "indicate[d] that the [March board] will meet at specific times on March 8 and 9."[61] The same information was posted on the Township's website and at Township Hall, and internal emails from Praxis indicate it was aware well in advance of the need to appeal to the March board.[62] While the meeting dates themselves were not on the Assessor Denial, they were in other forms that the Tribunal held Praxis did receive—and which Praxis has never denied receipt of—that were "reasonably calculated, under all the circumstances, to appraise interested parties of the pendency of the action and afford them an opportunity to present their objections."[63] This is especially true in this case, where Praxis had hired a third party tax professional to pursue its tax appeal. This case involves a simple failure to timely appeal despite notice and the opportunity to be heard. Due process is not, and should not, begin and end with a mechanical application of the denial notice requirements in MCL 211.9m and n to the Assessor Denial while ignoring all other facts.

The Tribunal found—and this finding was not disturbed on appeal—that Praxis had knowledge of when the Township's 2021 March board met.[64] The Tribunal also found that there was no due process issue. However, the Court of Appeals disagreed based on the Grand Rapids Press posting that could be read to indicate a March board meeting on March 10th.[65] The

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[60] *McKesson Corp v Division of Alcoholic Beverages & Tobacco*, 496 US 18, 37 (1990).
[61] Appendix 2 at 12.
[62] Praxis' Response to Township's Motion for Summary Disposition at p. 8, Tribunal docket lookup line item 28.
[63] *Sidun v Wayne Country Treasurer*, 481 Mich 503, 509; 751 NW2d 453 (2008).
[64] Appendix 2 at 13.
[65] Appendix 1 at 11.

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newspaper posting dates issue was a red herring. At the Tribunal level, the newspaper posting was not noted in Praxis' Motion for Summary Disposition or Praxis' response to Township's Motion for Summary Disposition. There was never a claim made, or evidence presented, that Praxis was even aware of the Grand Rapids Press posting regarding the Township's 2021 March board dates. A due process claim cannot be sustained based on something the taxpayer was not aware of—especially when, as found by the Tribunal, multiple other notices with the correct dates were admittedly received by Praxis.

The Tribunal noted that the combined document was not referenced in the Assessor Denial and correctly found no due process issue when considering all the information irrefutably known to Praxis. The Court of Appeals clearly erred in its conclusion to the contrary by relying on the Grand Rapids Press posting — information not even known to Praxis. There was indisputably notice of the requirements to perfect an appeal and an opportunity to be heard that satisfies due process. Praxis simply failed to act on that opportunity in a timely manner. Praxis' failure to utilize its opportunity to be heard does not constitute a violation of due process.

II. PRAXIS WAS NOT RELIEVED OF THE REQUIREMENT TO GO THE 2021 MARCH BOARD.

The absence of specific language regarding a combined document in the Assessor Denial did not relieve Praxis of the requirement of first going to the March board before the Tribunal could acquire jurisdiction over Praxis' 2021 appeal. MCLs 211.9m and n set forth clear procedures for a taxpayer that seeks to contest an EMPP denial by an assessor. "If the denial is issued after the first meeting of the March board of review that follows the organizational meeting, the appeal of the denial is either to the March board of review or the Michigan tax tribunal . . . within 35 days

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of the denial notice."[66] If the denial is issued before the first March board meeting, "the denial shall be appealed to the board of review under section 30 . . . ."[67]

This statutory scheme reflects the principles of due process. If an assessor denial is not timely, the taxpayer should not be deprived of notice and an opportunity to be heard—which is why an appeal can be made directly to the Tribunal within a 35-day period. If an assessor denial is timely, however, the taxpayer is required to go to the March board prior to the Tribunal acquiring jurisdiction. **This is the standard in Michigan**: "[e]xcept as otherwise provided in this section or by law, for an assessment dispute as to the valuation or exemption of property, the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute under subsection (6)."[68] Here, the Assessor Denial was timely issued on February 9, 2021 and the March board's first meeting after the organizational meeting was on March 8, 2021. Under the plain language of the statutes, Praxis had to go the March board before it could go to the Tribunal.

III. THE TRIBUNAL DOES NOT HAVE JURISDICTION OVER THIS MATTER.

Unlike Michigan's Article VI Courts, the Tribunal is a "quasi-judicial" agency created and governed by statute.[69] The Tribunal's jurisdiction is, and should be, limited to what is explicitly conferred by statute. MCL 205.731 conveys "original and exclusive jurisdiction" over "[a] proceeding for direct review of a final decision . . . relating to assessment, valuation, rates, special assessments, allocation, or equalization, under the property tax laws of this state." In turn, MCL

[66] MCL 211.9m(6); MCL 211.9n(6).

[67] 2021 PA 153 amended this provision to replace "shall" with "must." The statute was effective as of December 31, 2021 and thus was not in effect as of the relevant dates for this case but may present differently to this Court when reviewed as part of this case. The change does not impact the case.

[68] MCL 205.735a(3).

[69] *Michigan Properties LLC v Meridian Township*, 491 Mich 518, 518; 817 NW2d 548 (2012); MCL 205.701 *et seq*.

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205.735a sets forth the specific methods by which the Tribunal's jurisdiction is properly invoked under MCL 205.731 and contains the requisite deadlines, protest requirements, and more. MCL 205.735a(3) establishes the baseline that, unless noted "in this section or by law," a protest is required to go to the March board. MCLs 211.9m and 211.9n both require a March board protest under MCL 205.735a(3) if the notice is issued before the March board holds its first actual meeting. "Under the doctrine [of *in pari materia*], statutes that relate to the same subject or that share a common purpose should, if possible, be read together to create a harmonious body of law."[70] As the Assessor Denial was issued before the March board's first actual meeting, a protest to the board was required in order for the Tribunal to have jurisdiction over an appeal of the Assessor Denial. No protest was made by Praxis to the March board.

The law is clear: the Tribunal does ***not*** have jurisdiction to hear this appeal. To get around the plain language of the statutes, the Court of Appeals created a loophole to the Tribunal's jurisdiction by relying on *Parkview* to conclude that "in instances of *inadequate notice*, *this Court* may waive the protest requirement before the Board of Review and allow the case to proceed before the MTT."[71] This finding was independent of any due process claim. The Court *then* found there was also a due process issue and directed the "MTT to hear this case as a matter of equity, despite [Praxis'] failure to first protest to the Board of Review." These interrelated holdings are not supported, should be reversed, and *Parkview* overruled.

Understanding the error of relying on *Parkview* to create a jurisdictional loophole and imbuing the Tribunal with the equitable power necessary to allow the Tribunal to actually hear the case requires an analysis of *Parkview* and its reasoning, *Electronic Data* and what impact it had

[70] *People v Mazur*, 497 Mich 302, 313; 872 NW2d 201 (2015).
[71] Appendix 1 at 12 (emphasis added).

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on *Parkview*, how the two lines view *Parkview* after *Electronic Data*, the justification for the continued use of *Parkview*, and how that justification is not correct.

A. *Parkview* and *Electronic Data*

Parkview involved a case where the Tribunal dismissed the matter for lack of jurisdiction under MCL 205.735 as the matter was not first protested to the March board.[72] The issue, however, was that "the last day the board of review convened was April 3, 1988 – two days before respondents mailed the assessment notices."[73] In short, the taxpayer did not have notice in time to protest. The only case discussed in any detail in *Parkview* was this Court's holding in *W & E Burnside, Inc v Bangor Twp*.[74]

The *Parkview* Court determined it was appropriate to "adopt the Supreme Court's remedial approach in *Burnside*" and remanded to the Tribunal to hear the merits of the case.[75] This decision was based on the finding that the "late notices were not given in a manner reasonably calculated under all of the circumstances to apprise petitioners of the assessments and to afford them an opportunity to be heard."[76] To empower the Tribunal to hear the matter on remand the Court held:

> the 'jurisdictional' requirements of MCL 205.735; MSA 7.650(35) -- including the protest requirement of subsection (1) and the requirement set forth in subsection (2) that petitions regarding an assessment dispute be filed not later than June 30 of the tax year – as procedural requirements for perfecting an appeal in the Tax Tribunal.[77]

[72] 183 Mich App at 118.
[73] *Id*. at 117.
[74] *W & E Burnside, Inc v Bangor Twp*, 402 Mich 950*l* (1978).
[75] *Parkview*, 183 Mich App at 120.
[76] *Id*.
[77] *Id*. at 121.

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As MCL 205.735 was purely procedural in the *Parkview* court's view, the Tribunal could "assume subject-matter jurisdiction" on remand.[78] The *Parkview* opinion was published in April 1990, before the precedential cutoff in MCR 7.215(J)(1).

Electronic Data, a 2002 case, held that MCL 205.735 "is not a notice statute, but is a jurisdictional statute that governs when and how a petitioner invokes the Tax Tribunal's jurisdiction."[79] Under MCL 205.735(2), "the jurisdiction of the tribunal . . . is invoked by a party in interest, as petitioner, filing a written petition on or before June 30 of the tax year involved'" showing that it "is a jurisdictional statute."[80] In that case, the Tribunal dismissed the matter under MCL 205.735 as it was not filed by the June 30th deadline set forth in the statute. The Court went on to note that "[b]oth our Supreme Court and this Court have clearly stated that the time requirements contained in MCL 205.735(2) are jurisdictional in nature" and cited to *Szymanski v Westland*.[81] *WA Foote Mem' Hosp v City of Jackson*, a 2004 case also involving a timing issue under MCL 205.735, more succinctly stated that the "requirements of MCL 205.735(2) are jurisdictional . . . ."[82] Both cases are published.

Electronic Data overrules *Parkview* and the Court of Appeals has repeatedly held that to be the case."*Parkview's* assertion that MCL 250.735 sets forth procedural, rather than jurisdictional, requirements therefore cannot survive this Court's decisions in *Electronic Data Sys Corp* and *WA Foote Mem Hosp*."[83] *Pacific Props v Shelby Twp* noted that "*Parkview* was decided

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[78] *Id*. at 121-22.
[79] 253 Mich App at 542.
[80] *Id*. at 541.
[81] *Id*. at 543; *Szymanski v Westland*, 420 Mich 301, 305; 362 NW2d 224 (1984).
[82] *WA Foote Mem'l Hosp v City of Jackson,* 262 Mich App 333, 335; 686 NW2d 9 (2004).
[83] *Jehovah Shalom Church of God v City of Detroit*, unpublished per curiam opinion of the Court of Appeals, issued April 23, 2020 (Docket No. 348320) at 12. This case is included, and relevant, because it is one of the only cases to address both *Electronic Data* and *Parkview*. MCR 7.215(C)(1).

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before 1990, and therefore it is not binding precedent. Rather, both this Court and our Supreme Court have held that MCL 205.735(2) is not merely a notice statute; it is a jurisdictional statute governing when and how a petitioner may invoke the [Tribunal's] jurisdiction."[84]

The limited cases that utilized *Parkview* after *Electronic Data* do so under two assumptions. First, that *Parkview* was based on this Court's decision in *W & E Burnside* and thus cannot be overruled by *Electronic Data*. "[I]t must be remembered that *Parkview* was predicated on a Supreme Court decision which is, of course, binding precedent that trumps opinions emanating from this Court"—i.e., *W & E Burnside*.[85] Second, that the remedial approach is separate from the holding that MCL 205.735, or MCL 205.735a, is procedural and thus a court can utilize "the approach set forth in *Parkview*, except for that portion of *Parkview's* analysis that concludes the requirements of MCL 205.735 are procedural, not jurisdictional."[86] Both of these assumptions are incorrect.

B. *W & E Burnside* and this Court

W & E Burnside involved taxpayers whose assessment was increased from $48,000 in 1974 to $100,000 in 1975.[87] As found by the Court of Appeals, the taxpayers were required to first protest the increase to the board of review for the Tribunal to have jurisdiction, but were unable to do so "as neither had notice of the increase until well after the meetings."[88] Under the existing

[84] *Pacific Props v Shelby Twp,* unpublished per curiam opinion of the Court of Appeals, issued March 1, 2005 (Docket No. 249945) at 11. This case is included, and relevant, because it is one of the only cases to address both *Electronic Data* and *Parkview*. MCR 7.215(C)(1).

[85] *Mich State Univ v Lansing*, unpublished per curiam opinion of the Court of Appeals, issued February 15, 2005 (Docket No. 250813) at 12.

[86] *Morehouse v Mackinaw Twp*, unpublished per curiam opinion of the Court of Appeals, issued March 17, 2009 (Docket No 281483), at 9.

[87] *W & E Burnside, Inc v Bangor Twp*, 77 Mich App 618, 621; 259 NW2d 160 (1977). Due to the concise nature of the Supreme Court's decision in *W & E Burnside*, the Court of Appeals decision is cited here for its factual background.

[88] *Id*. at 622.

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notice statute, MCL 211.24c, a taxpayer was only required to be provided notice under MCL 211.24c if more than 30% of the parcels had an assessment increase.[89] This was a temporary situation as the Court of Appeals noted that "as of December 23, 1976, it is mandatory that notice be sent in all instances of an increased valuation of property and that percentage determinations will be unnecessary in the future."[90] The case was initially filed in Bay County Circuit Court, and removed to the Tribunal where the case was dismissed "because plaintiffs had failed to exhaust their administrative remedies."[91] The Court of Appeals held that if the 30% threshold was met, no notice was necessary and the assessment is valid; if not, the assessment was invalid and remanded to the Circuit Court to determine if the threshold was met.[92]

In lieu of leave to appeal, this Court reversed and remanded to the Tribunal to determine if there should have been notice and, if notice was required, whether notice was provided.[93] If notice was required and not provided, the assessment was invalid.[94] This Court also held that even if no notice was required, "the tribunal must still determine whether or not the assessment increase was excessive and that there is no other bar to granting relief."[95] This Court's Opinion is concise, short on analysis, and subject to a variety of readings.

This Court cited *W & E Burnside* in *Highland-Howell Dev Co LLC v Marion Twp*, a 2007 case, for the proposition that "the statutes at issue here cannot be construed in a manner that would deny petitioner due process of law."[96] That case involved a sewer special assessment levied in

[89] *Id*. at 625.
[90] *Id*. at 621.
[91] *Id*.
[92] *Id*. at 625.
[93] *W & E Burnside*, 402 Mich at 950*l.*
[94] *Id*.
[95] *Id*.
[96] 478 Mich 932, 933; 733 NW2d 761 (2007).

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1996 following a hearing where impacted taxpayers could formally protest.[97] The 1996 assessment included a trunk line across the taxpayer's property.[98] "[A]fter the time for challenging the special assessment roll had passed," the trunk line across the taxpayer's property was eliminated, but the removal of the trunk line was not formally ratified until 2004.[99] The taxpayer appealed within 30 days of the 2004 ratification and the Tribunal dismissed as there was no objection or timely appeal to the earlier adoption of the special assessment, as required by MCL 205.735 and 41.726(3).[100]

This Court reversed the dismissal as MCL 205.735(1) "cannot be construed to require petitioner to have objected to the removal of the trunk line across its property at the hearing since that removal had not yet taken place at the time of the hearing."[101] Rather, "MCL 205.735(2) grants the tribunal jurisdiction over petitioner's 2004 petition because the 2004 resolution is a 'final decision' and petitioner filed a written petition within 30 days after that 'final decision.'"[102]

C. The Correct Interpretation and Application of *W & E Burnside*

Highland-Howell Dev Co correctly interpreted *W & E Burnside*: in instances where notice is either not provided or provided in such a way that the taxpayer is actually deprived of due process, a "remedial approach" that reads the Tribunal's jurisdictional statutes together to provide relief should be employed.[103] That "remedial approach" is not changing the plain language of MCLs 211.9m, 211.9n, and MCL 205.735a(3) via a judicially created loophole in cases of "inadequate notice;" rather it calls for following the General Property Tax Act and the explicit, yet limited, jurisdictional authority that Act grants the Tribunal.

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[97] *Id*. at 933.
[98] *Id*. at 932.
[99] *Id*.
[100] *Id*. at 933.
[101] *Id*.
[102] *Id*.
[103] *W & E Burnside*, 402 Mich at 950*l*.

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The notice in this case was adequate and did not deprive Praxis of either notice that its EMPP exemption claim was denied or an opportunity to have that claim heard before the March board as required by statute to preserve an appeal right to the Tribunal. The loophole created by the Court of Appeals decision here was neither necessary nor in keeping with the scheme of the Tax Tribunal Act or the statutory language thereof. "The significant public interest underlying the collection of revenues by the government resulted in limitations upon a taxpayer's ability to contest tax assessments and obtain refunds of general revenue taxes."[104]

The basis of the Court of Appeals' decision here to modify the statutory framework, *Parkview*, is bad law and should be clearly overruled to prevent dilution of the plain language of the MCLs 205.735a, 211.9m, and 211.9n and any questioning of the limits of the Tribunal's jurisdiction beyond the relevant statutes. As a preliminary matter, the application of *Parkview* to this case is suspect as the notice in this matter was timely sent and received. Inadequate notice—the claim here—and untimely notice—the claim in *Parkview*—are fundamentally different as the former still allows for an opportunity to be heard while the latter does not and could create a due process issue. Indeed, in the limited times *Parkview* has been cited after *Electronic Data* was published, it has been exclusively used in cases with **untimely** notice where the taxpayer would necessarily be fully deprived of the opportunity to be heard.

Aside from the material factual differences between *Parkview* and this case, overruling *Parkview* is necessary to clarify the strict limits of the Tribunal's jurisdiction in a manner that is consistent with other limits, deadlines, and protest requirements applicable to the Tribunal: May 31st and July 31st in MCL 205.735a(6) for an "assessment dispute" depending on property type;

[104] *Wikman v City of Novi*, 413 Mich 617, 627; 322 NW2d 103 (1982).

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special assessments protested at hearing in order for the Tribunal to acquire jurisdiction in MCL 205.735a(5); agricultural exemptions to the board of review under MCL 211.7ee(7); and many more. Strict deadlines are the norm, not the exception.

D. Overruling *Parkview* Ensures the Tribunal Is Not Improperly Delegated Equitable Powers

Overruling *Parkview* also addresses the equity component of the Court of Appeals' ruling. In order to allow the Tribunal to actually hear the case on remand, the Court of Appeals explicitly directed that the Tribunal "hear this case as a matter of equity" as it would otherwise be unable to hear the case.[105] This holding is clearly erroneous as it is well settled that "the Tax Tribunal does not have powers of equity."[106] It is "an administrative tribunal only and not a court possessing general equitable and legal powers."[107] "In the absence of an express legislative conferral of authority, an administrative agency generally lacks the powers of a court of equity."[108] A review of MCL 205.735a shows no powers of equity conferred on the Tribunal and neither MCL 211.9m or 211.9n, at issue in the present case, indicate that the Tribunal is imbued with such equitable power.

In *Hillsdale County Senior Servs v County of Hillsdale*, this Court held that the "subject matter, not the type of relief requested determines the tribunal's jurisdiction."[109] In *Romulus City Treasurer v Wayne Country Drain Comm'r*, this Court found that "[t]he Tax Tribunal Act does not prevent a court of equity from determining what should be done with funds . . . obtained under

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[105] Appendix 1 at 13.

[106] *Elec Data Sys Corp*, 253 Mich App at 548 (citing *Federal-Mogul Corp v Dep't of Treasury*, 161 Mich App 346, 359; 411 NW2d 169 (1987)); *Wikman v City of Novi*, 413 Mich 617; 322 NW2d 103 (1982).

[107] *Mich Mut Liability Co v Baker*, 295 Mich 237, 242; 294 NW 168 (1940) (quotation marks and citation omitted).

[108] *Delke v Scheuren*, 185 Mich App 326, 332; 460 NW2d 324 (1990).

[109] 494 Mich 46, 61; 832 NW2d 728 (2013).

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a special assessment."[110] While "injunctive relief may not be directly available" from the Tribunal, "nothing in the Tax Tribunal Act prohibits one from seeking equitable relief to enforce a tribunal decision" from an alternative court or administrative body that possesses the authority to do so.[111]

While the Tribunal itself lacks equitable powers, if it has jurisdiction over a matter it can issue "writs orders or directives" involving equitable topics that are then taken to a court with equitable power to enforce.[112] In "extraordinary circumstances—those so extraordinary that a court may deny mandamus compelling ministerial acts—the circuit court retains equitable jurisdiction to decide a case that arguable falls within the scope of MCL 205.731(b)."[113] If the Tribunal had equitable powers there would be no need to go to circuit court to enforce orders and no need to preserve jurisdiction in the circuit court for extraordinary circumstances where equitable relief is called for. It is well-settled that the Tribunal does not have powers of equity and the Court of Appeals here improperly delegated equitable power in violation of the Tax Tribunal Act, precedent, and MCLs 600.605 and 205.731.

E. Summary

In this case the Court has the chance to rectify an issue that has split the Court of Appeals and clarify how *W & E Burnside* should be interpreted and applied. Consistent with this Court's prior opinions and the *Electronic Data* line of cases, MCL 205.735, and its predecessor MCL 205.735a, should be read as jurisdictional and the Tribunal's jurisdiction limited to the statutory text that empowers it. This necessitates overruling *Parkview* and affirming the Tribunal's decision in this case. That the Court of Appeals had to resurrect a 1990 decision, empower the Tribunal with equity, and find a due process issue by focusing on the denial notice itself and not the other

[110] 413 Mich 728, 747; 322 NW2d 152 (1979).
[111] *Wikman*, 413 Mich at 648.
[112] MCL 205.732.
[113] *Hillsdale*, 494 Mich at 58.

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information that Praxis had is indicative of the weakness of Praxis' due process claims. Rather than jump through those multiple hoops, this Court should apply the plain language of the Tribunal's jurisdictional statutes and the Tribunal's undisturbed findings of fact and rule that dismissal was proper in this case as the Tribunal lacked jurisdiction.

CONCLUSION

Even if the Assessor Denial was technically deficient, the facts of the case clearly establish that Praxis had notice of the denial and ample opportunity to appeal to the March board. There is no due process issue here. The plain language of MCLs 211.9m and 211.9n and the undisputed facts of this case clearly establish a protest to the March board was required—but was not made. In light of these facts, the plain language of the Tribunal's statutes, and this Court's precedent, the Tribunal lacked jurisdiction to hear this case. The Tribunal's jurisdiction is strictly limited by statute and cannot be bent or modified absent an extraordinary constitutional violation that is not present here. Accordingly, this Court should adopt this approach, and explicitly overrule *Parkview*.

Byron Township respectfully requests that this Court:

1. Reverse the Court of Appeals and affirm the Tribunal's Final Opinion and Judgment; or, alternatively,
2. Grant the application for leave to appeal and schedule further briefing and argument.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I hereby certify that the foregoing brief complies with the word count limitation (no more than 16,000 words) and format requirements of MCR 7.212(B). The brief contains 8,005 countable words (9,065 words in entire document).

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STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT
On 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.

MSC No. 166190

COA No. 361888

Tax Tribunal No. 21-000523-TT

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PROOF OF SERVICE

On the date below I served via the Court's e-file system Appellant's Supplemental Brief and Its Application for Leave and accompanying Appendix on:

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I declare that the statement above is true to the best of my information, knowledge and belief.

Dated: May 22, 2024

/s/Laura M. Hallahan
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