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STATE OF MICHIGAN
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,	MSC No. 166190
v	COA No. 361888
BYRON TOWNSHIP,	Tax Tribunal No. 21-000523
Respondent-Appellant.	

BRIEF AMICUS CURIAE OF THE MICHIGAN ASSESSORS ASSOCIATION IN SUPPORT OF RESPONDENT-APPELLANT BYRON TOWNSHIP

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Dated: June 26, 2024

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STATEMENT OF JURISDICTION

Amicus, the Michigan Assessors Association, concurs in the Statement of Jurisdiction filed by Respondent-Appellant, Byron Township.

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QUESTIONS PRESENTED

In its April 10, 2024 Order directing the Clerk to schedule oral argument on the application for leave to appeal, and instructing the parties to file supplemental briefs in accordance with MCR 7.312(E), the Court listed three issues to be addressed by the parties. Amicus, the Michigan Assessors Association, addresses each of the three issues:

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

The Michigan Tax Tribunal would answer:	Yes
The Court of Appeals would answer:	No.
Petitioner-Appellees answer:	No.
Respondent-Appellants answer:	Yes.
Amicus The Michigan Assessor's Association answers:	Yes.

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2. If the assessor's denial of the Petitioner-Appellee's request for exemption as eligible manufacturing personal property did not satisfy the requirements of MCL 211.9m(3) and MCL 211.9n(3) and/or due process, did the denial notice's failure to satisfy those requirements relieve the Petitioner-Appellee of the requirement to protest the denial at the 2021 March Board of Review?

The Michigan Tax Tribunal would answer:	No.
The Court of Appeals would answer:	Yes.
Petitioner-Appellees answer:	Yes.
Respondent-Appellants answer:	No.
Amicus The Michigan Assessor's Association answers:	No.

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

The Michigan Tax Tribunal would answer:	No.
The Court of Appeals would answer:	Yes.
Petitioner-Appellees answer:	Yes.
Respondent-Appellants answer:	No.
Amicus The Michigan Assessor's Association answers:	No.

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I. STATEMENT OF INTEREST [1]

The Michigan Assessor's Association (the "Association") is the principal state government affairs and public information organization consisting of assessor professionals in the State of Michigan. It was organized to improve the standards of assessment practice, to provide a clearing house for the collection and distribution of useful information relative to assessment practice, and to promote justice and equity in the distribution of Michigan's tax burdens. Its activities focus on education of members and those pursuing assessor certification, on monitoring and recommending legislation related to assessment, and on publishing news regarding State Tax Commission, Michigan Tax Tribunal, Court of Appeals, and Supreme Court developments related to *ad valorem* taxation. Its members include over a thousand assessing professionals throughout the State of Michigan, most of whom serve in official roles as assessing officers for townships and cities.

In its April 10, 2024 Order directing supplemental briefing on the application for leave to appeal, the Court invited the Association to file a brief amicus curiae in this matter.

[1] No counsel for either party authored this brief in whole or in part. Neither the counsel for either party nor either party made a monetary contribution intended to fund the preparation or submission of this Brief. Byron Township's assessor is a member of the Association and pays general membership fees, but has made no monetary contribution intended specifically to fund the preparation or submission of this Brief in whole or in part. See MCR 7.313(H)(3); MCR 7.312(A).

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II. INTRODUCTION

Weeks before the March 9, 2021 final adjournment of the Byron Township Board of Review, the Township's assessor sent to Petitioner-Appellee Sixarp, LLC ("Praxis") a letter. The letter was directed *specifically* to Praxis.

The letter identified Praxis's parcel number, address, and the values of personal property that the assessor believed to be non-exempt and thus taxable. The letter stated that Praxis could appeal the taxable value to the Township's Board of Review, which would meet March 8 and March 9:

YOUR ASSESSMENT CHANGED FOR THE FOLLOWING REASON(S):

PERSONAL PROPERTY WAS UPDATED ON 2/17/2021, ANY NEW UPDATES WILL BE POSTED ON THE WEBSITE.

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. RATIOS FOR ALL CLASSES: 50%

In February of 2021, the assessor also received and denied Praxis's application for an eligible manufacturing personal property ("EMPP") exemption under MCL 211.9m(3) and 9n(3). The assessor sent a *separate* notice advising of the denial and that the denial must be appealed to the board of review if at all. Unlike MCL 211.24c(1), MCL 211.9m(3) and 9n(3) *do not* expressly require that a denial notice repeat the time and place of the meeting of the board of review.

The Michigan Assessor's Association files this amicus brief because the assessor here complied with due process requirements. The Tribunal made a factual

finding that Praxis had *actual notice* of the time, place, and manner for protesting at the Board of Review. Actual notice is the type of notice that procedural due process does not guarantee but is nonetheless designed to confer. Michigan courts have held that *actual notice* satisfies due process, even if the notice is not carried out as contemplated by rule or statute.

This Court should not countenance Praxis's attempted end-run to the board of review protest requirement created by the Legislature. For over a century, boards of review have served important functions in the review, correction, and administration of property taxes in Michigan. The Legislature, as a general rule, requires that taxpayers exhaust their administrative remedies before the board as a precondition to invoking the jurisdiction of the Tribunal.

The Court of Appeals' improper exercise of equity to waive requirements in the face of clear statutory language opens the door to a multitude of tax appeals that the Legislature sought to avoid.

The Association supports the positions advanced by Byron Township, and respectfully requests that the Court restore the Tribunal's decision denying Praxis's petition.

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III. STATEMENT OF FACTS AND PROCEEDINGS

The Association adopts and incorporates the Statement of Facts presented by the Township. (Appellants' Supplemental Brief ("Twp Br" at pp. 1-7.)) It highlights, however, certain facts important to the analysis contained herein, and addresses certain additional fact characterizations made by Praxis that conflict with the evidence.

A. Praxis received actual notice of the dates of the board of review and did not file its protest until after those dates.

The Tribunal found that Praxis received the Township's Notice of Assessment in advance of the board of review, and that this Assessment Notice gave Praxis actual notice of the time, place, and manner in which it could file an appeal:

> Petitioner contends that it was not provided by appropriate notice of the times and dates at which the BOR would meet or the manner in which the BOR would meet. The Tribunal disagrees, as this information was explicitly stated under "March Board of Review Information" provided to Petitioner in the Notice of Assessment. Specifically, that notice indicates that the BOR will meet at certain specific times on March 8 and March 9. … The notice of assessment also indicates that appeals to the BOR made be made in-person, virtually, or by appeal letter, directly contradicting Petitioner's assertion that not notice was provided of the manner in which the BOR would be conducted. [See Praxis's 9/13/2022 Appendix in the Court of Appeals ("Praxis COA App"), App. A. 011a-012a (Tribunal's April 12, 2022 Final Opinion and Judgment).]

The Tribunal also found that it is "not disputed that Petitioner's written appeal was not filed with the assessor until March 10, which is outside of the statutorily required appeal period under MCL 211.9m(3) and MCL 211.9n(3)." *Id.*

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B. There is no evidence that Praxis relied on the Grand Rapids Press publications noted by the Court of Appeals.

Spurred by Praxis's injection of new information in an appellate reply brief (rather than before the Tribunal), the Court of Appeals noted that Byron Township's website and publication in the Grand Rapids Press included a statement that "board of review appointments may be made by contacting the assessor's office from March 1[st] *through March 10th*." *Sixarp, LLC v Township of Byron,* ___ Mich App ___; ___ NW3d ___ (2023) (slip op, p. 4) (emphasis added). The same notice, however, correctly and more prominently stated that the Board of Review would meet on March 8th and 9th. (*Id.*)

The Grand Rapids Press publication was not discussed by the Tribunal. The Tribunal apparently received no evidence regarding, and made no factual determinations as to, whether Praxis actually relied on the information in the Grand Rapids Press or other postings. Praxis filed multiple affidavits with its Appendix on Appeal, but none of these affidavits mention that anyone from Praxis ever saw the postings or publications, or address whether Praxis relied on them. (See Affidavits of Richard King, Timothy Karsten, and Lisa M. Pohl, Praxis COA App, App N., O., and P.)

Praxis also does not claim that it sought an appointment on March 10th as would have ostensibly been available under the Grand Rapids Press language. The *evidence* shows only that its agent sent an e-mail attaching a letter appeal at 6:39 p.m., *after hours*, on March 10th. Even if the board *had* met that day, it would have been under no obligation to meet after hours to accept or consider the appeal.

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C. Praxis was not denied an appointment at the board of review.

Praxis claims that its "representatives twice called the assessor and asked for a scheduled appointment, and twice the assessor denied those requests." (Praxis Supp Br, p 16.)

This is *in*consistent with the evidence.

Praxis's finance controller never attests that he was refused an appointment. He attests merely that the assessor "*did not recommend* an appearance" and "told me to email him a letter." (Praxis COA App, App O, 103a, ¶ 5 (affidavit of Timothy Karsten) (emphasis added).)

Similarly, Praxis's hired agent from Rehmann never attests that she even *talked with* the assessor. The kernel of her pre-adjournment interactions with the assessor was trading voicemails—i.e., in "early March 2021" she left a message with the assessor and by March 2 (i.e. within 24 hours) she received a response voicemail, transcribed in her affidavit, in which the assessor stated "I think the letter appeal *would be the best*" and encouraged Praxis's agent to "call if you have any … additional questions." (Praxis COA App, App P, pp 109a-110a, ¶¶ 7-8 (Affidavit of Lisa M. Pohl) (emphasis added).) The assessor's voicemail asked the agent to send him an e-mail so he could provide a recommended petition form; the agent does not attest that she ever did so, with her next communication with the assessor being the after-hours e-mail on March 10, 2021. (*Id.*)

Of note, a person does not need an appointment in advance to perfect a protest. Section 30 of the General Property Tax Act provides that "persons or their agents who have appeared to file a protest before the board of review *at a scheduled meeting or*

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at a scheduled appointment must be afforded an opportunity to be heard by the board of review." MCL 211.30 (emphasis added).

Neither Praxis nor its agents appeared at a scheduled meeting *or* at a scheduled appointment.

D. The Township did not mislead Praxis or its agents as to the March 9 deadline.

The affidavits submitted by Praxis to support its claims before the Tribunal do not show or event hint that its agents ever asked the assessor about the deadline for its submitting their appeal. (Again, the assessor had already sent them a notice stating the meeting dates of the board.) The transcribed voicemail of the assessor and the assessor's advice as paraphrased in the affidavits contain no inaccurate or misleading information. What the evidence shows instead is that on March 2, a week before the final adjournment of the board of review, the assessor encouraged Praxis's agent to send him an e-mail so he could provide a recommended form of petition, and that he encouraged the agent to "give me a call if you have any … additional questions." (Praxis COA App, App P, pp 109a-110a, ¶¶ 7-8 (Affidavit of Lisa M. Pohl).)

The assessor was courteous, responsive, and provided accurate information.

Praxis's agent did not send an e-mail for a petition form as the assessor suggested, and instead waited 8 days after the voicemail to submit an after-hours letter appeal.

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IV. STANDARD OF REVIEW

The Association adopts and incorporates the Standard of Review as stated by the Township. (Twp Br, pp 9-10.) Most crucial here, the Association underscores the limited nature of review of decisions of the Tax Tribunal: this Court must accept the Tax Tribunal's factual findings if "competent, material, and substantial evidence on the whole record" supports those findings. *Michigan Props, LLC v Meridian Twp*, 491 Mich 518, 527; 817 NW2d 548 (2012).

V. ARGUMENT AND DISCUSSION

A. The General Property Tax Act and Tax Tribunal Act comprehensively regulate the assessment, protest, and determination of property tax liabilities.

Before proceeding to argument, some explication of the relevant statutes—and of the role of the assessor and of the board of review—may aid in the Court in reviewing the issues identified for supplemental briefing by the parties. The goal of statutory interpretation is to discern and to give effect to the Legislature's intent. See *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). The best indicator of the Legislature's intent is the language of the statute itself. *Id.* A statute is not to be interpreted in a vacuum; it must be interpreted in the context and with a view to the statute's placement within the overall statutory scheme. *Manuel v Gill*, 481 Mich 637, 650; 753 NW2d 48 (2008).

i. The work of Township assessors supports a wide range of government functions that go beyond the Township level.

Michigan property taxes pay for township and city administration and services, but also the services of many other entities that are allowed by law to levy

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ad valorem property taxes. These include school districts, counties, community colleges, libraries, airports, and transit authorities, among others. Though their work benefits citizens at many levels of state government, townships and cities stand largely alone in carrying out the core functions of valuation, assessment, and exemption determinations under the General Property Tax Act, MCL 211.1 et seq. ("GPTA").

Under GPTA, "all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation." MCL 211.1. Assessing officers are charged with performing assessment of "all the property in the state" *annually*. MCL 211.10. Given the variety of property types, issues, and exemptions, the assessing function is a complex one. In carrying it out, assessors must abide by strict timelines to support not only their own operations but those of the long trail of state governmental entities that benefit from their work. A copy of the State Tax Commission's Bulletin 2020-15, "2021 Property Tax, Collections and Equalization Calendar," is included in the Association's Appendix. (**MAA App, 1**.) This shows that assessment and certification of the tax rolls are but two steps in a long series of collection and financial transfers that support local and state government operations, with successive steps often depending on the timely satisfaction of the ones that came before it.

ii. Assessors and boards of review work together to establish fair assessments.

In the lead up to the statutory deadline for submitting a completed and certified assessment roll to the board of review on March 1 (see MCL 211.24),

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assessors inspect properties, review personal property statements, receive and consider exemption requests, and otherwise engage with members of the public to formulate recommendations on values and exemptions to the board of review.

Assessors are the first vanguard of government finance. To be effective in their roles as public servants, they must make a panoply of judgment calls about the most efficient use of municipal resources, what questions should be posed and what information should be reviewed, and how to not only achieve t he *perception* of fairness but how to achieve *actual* fairness in spreading the cost of government services among the citizens of the jurisdictions in which they operate. They are aided in these decisions by the board of review—the second vanguard of government finance and a check on the assessor's functions.

Put simply, boards of review look over the assessor's work on behalf of taxpayers. See *New Covert Generating Company, LLC v Twp of Covert,* 334 Mich App 24, 51; 964 NW2d 378 (2020). By law, a township's board consists of least 2/3 property taxpayers of the township. MCL 211.28(1). Members of the board cannot also be members of the township or relatives of the assessor. *Id.* While law does not specify any particular type or level of expertise, members are often chosen for their financial, real estate, banking, or other experience that will assist them in identifying and correcting errors in the assessor's work.

The assessor works with the board, but does not control it. The assessor may make recommendations to the board, but is subordinate to the board's determinations. Further, once the board of review adjourns, the law explicitly

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removes authority from the assessor to propose or make changes to the tax rolls without invoking the jurisdiction of the Tax Tribunal or the State Tax Commission. See, e.g., MCL 211.53b (concerning the process for the assessor to seek correction of qualified errors).

When an assessor becomes aware of a late appeal (i.e., of an attempted appeal made after the board of review adjourns), he or she cannot simply reconstitute the board; nothing within GPTA gives an assessor such power or otherwise contemplates that boards will or must reconvene for such purpose.[2] Crucially, boards of review are subject to the requirements of the Open Meetings Act. See MCL 211.29(6). The Open Meetings Act requires that rescheduled regular or special meetings, as well as meetings after mere *recesses* of more than 36 hours, must be preceded by adequate public notice of at least 18 hours. MCL 15.265(2)-(5).

iii. Boards of review have been an integral component of local *ad valorem* taxation since the 19th century.

Serving on the board carries certain burdens. Board members are subject to mandatory training. MCL 211.10g. They must sit in judgment of protests presented by their neighbors, and must take a constitutional oath. MCL 211.28(1). Additionally, the members are required to meet for a minimum number of hours and on specific days set forth by statute. MCL 211.29. Given the board's obligation to abide by these meeting requirements, a protest must be brought to the board's

[2] Section 30b of GPTA provides that revisions to personal property assessments "in 1965 *only*" may be considered at a reconvened meeting of the board, but only after written notice to each affected taxpayer. MCL 211.30b (emphasis added).

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attention within the statutory timeframe for the public meetings to be considered timely. *Oakwood Farms Assoc v Oxford Twp*, 107 Mich App 602, 605-606; 309 NW2d 685 (1981).[3]

Once protests are received, the board has only a limited amount of time—until April 1—to complete its review. MCL 211.30a. While many jurisdictions approve *per diem* compensation for board members, this compensation can be fairly low—board members typically volunteer for service out of a sense of civic duty rather than for the pay.

This citizen-board structure has served Michigan for many years. Boards of review have been an integral part of the assessing process in Michigan since the 19th century. Even before the 1893 enactment of the General Property Tax Act, boards of review were employed to review and correct assessments presented by assessing supervisors. See *Chamberlain v City of St. Ignace*, 92 Mich 332, 334; 52 NW 634 (1892) (discussing St. Ignace board of review, constituted to "review and correct the assessments made by the supervisors of the several wards.")

Indeed, up until recently, the boards of review were called upon to review nearly *every* property tax controversy arising within their unit's borders. Section 35

[3] "As long as the board of review fulfills the statutory public meeting requirements, it is our opinion that a protest to be timely must be brought to the board's attention within the time frame of those public meetings. If a resident is required to appear in person on one of the specified hearing dates, it follows that a nonresident, who is not required to appear personally, must at least file a letter of protest before the completion of the last public hearing." *Oakwood Farms Assoc,* 107 Mich App at 605-606 (affirming Tribunal's dismissal for lack of subject matter jurisdiction pursuant to MCL 205.735(1).)

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of the Tax Tribunal Act, which applies before January 1, 2007, provides that "for an assessment dispute as to the valuation of property or if an exemption is claimed, the assessment *must be protested* before the [March] board of review before the tribunal acquires jurisdiction," with the lone exceptions being for those issues that were reserved to the July and December meetings of the board of review. MCL 205.735(1). Direct appeals to the Tribunal for certain categories of property (as permitted after January 1, 2007 under MCL 205.735a) are a relative novelty. See *New Covert Generating Company LLC,* 334 Mich App at 52 ("Starting with the 2007 tax year, the Legislature carved out certain subsets of appeals that could proceed directly to the Tribunal, but the general rule of prior board protest remained for most taxpayers.")

Assessors and boards, as well as the timelines to which they adhere, serve important procedural functions in another sense. In addition to performing the core assessment duties that support a variety of state government services, townships and cities also stand largely alone in defending assessments and exemption determinations in litigation, even though the township or city only receives a portion of the tax revenues arising from those determinations. This creates a misalignment in incentives—a property owner who appeals a determination will gain 100% of the refund, but the township that defends a determination—including the time and expense of litigation—only retains a portion of the tax proceeds.

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In GPTA and the Tax Tribunal Act (MCL 205.701 *et seq.*), the Legislature has comprehensively[4] established the procedures and timelines that govern property tax assessment, protest, certification, and collection. The board of review, including the specific deadlines governing its operations, are part of that process, and the successful operation of those boards prevents unnecessary disputes from reaching the tax tribunal and the courts. Townships and cities dedicate resources to the effective operation of these boards *to avoid* costly and prolonged litigation as well as the uncertainty such litigation injects into municipal budgeting and planning.

This Court, respectfully, should reverse the Court of Appeals' decision because it endangers this framework. Without a compelling showing that a property owner's due process rights have been violated, the exercise of equity (such as that by the Court of Appeals here) to open the door to tax appeals that have skipped the board of review process subverts Legislative intent. The Court of Appeals' decision further invites a slew of taxpayers who have missed strict statutory deadlines to pursue costly litigation against municipalities on equitable grounds, upsetting the balance set and relied upon by the Legislature for more than a century.

[4] GPTA "provides a comprehensive system for the assessment of property for ad valorem tax purposes and the collection of those taxes." *Michigan Props LLC v Meridian Twp*, 491 Mich at 530. It also provides for the administration of the system. *Id.* This includes the error-correcting powers of the boards of review, set forth in MCL 211.29 and 211.30.

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B. The notices sent to Petitioner-Appellee satisfied due process.

i. The Legislature requires only that the notice of assessment state the times of the board of review; it does not require that EMPP denial notices do so.

Praxis premises its due process claims on the notion that the assessor's denial did not identify the March 9th date as the last scheduled date of the Township's board of review. But the EMPP statutes governing the assessor's denial do not require that it contain that information.

Section 9n(3) of GPTA states that an assessor may deny an EMPP claim "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." MCL 211.9n(3). Other than omitting reference to the combined document requirement—which is not at issue here—the assessor's denial complied with the requirements. It stated the reason for the denial and stated that it must be appealed to the board of review.

The Legislature did not require that the assessor state the dates of the board of review in the denial. It knows how to add such a requirement. Indeed, in § 24c(1) of GPTA, it did so when establishing the requirements for *assessment notices*. Section 24c(1) provides: "The assessor shall give to each owner or person or persons listed on the assessment roll of the property a notice by first class mail of an increase in the tentative state equalized valuation or the tentative taxable value for the year." This notice "shall specify" certain key information concerning the relevant parcels

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and, also, "[t]he notice shall … specify the *time and place of the meeting of the board of review*." MCL 211.24c(1) (emphasis added).

There is no equivalent language in § 9m(3) or 9n(3).

Unlike the EMPP denial, which is not required to be sent before the board of review meets in any event, the Legislature requires that the annual notice of assessment—sent to *all property owners* facing an increase[5] in *either* state equalized value *or* taxable value (e.g. because of a denial of an exemption)—be mailed at least 14 days before the meeting of the board of review. This procedural safeguard assures that *all* property owners facing a taxable value increase, and wholly regardless of the reason, should receive personal, direct notice of the board of review's hearing times.

The notice provided by the Township's assessor to Praxis in 2021 complied with MCL 211.24c(1). It stated:

YOUR ASSESSMENT CHANGED FOR THE FOLLOWING REASON(S):

PERSONAL PROPERTY WAS UPDATED ON 2/17/2021, ANY NEW UPDATES WILL BE POSTED ON THE WEBSITE.

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. RATIOS FOR ALL CLASSES: 50%

[See Praxis COA App, App. F, Notice of Assessment.]

Since the combined document requirement is not at issue (as it was not the basis of the Township's rejection, the board of review's rejection, or the Tribunal's

[5] Where there has been no change from the prior year's assessment, no notice is required. Every owner of land is charged with knowledge that their property will be taxed annually, even if they do not receive actual notice. See *Caplan v Jerome,* 314 Mich 198, 203; 22 NW2d 270 (1946).

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determination), the assessor's denial complied with the plain language requirements of §§ 9m(3) and 9n(3).[6] Further, and given the undisturbed factual finding of the Tribunal that Praxis had actual notice of the dates of the hearings from the earlier assessment notice, the assessor's denial plainly also complied with due process.

ii. *Alan v Wayne County* is distinguishable.

Praxis claims that *Alan v Wayne County,* 388 Mich 210; 200 NW2d 628 (1972) stands for the proposition that "secondary sources of information cannot cure deficiencies of a notice." (Praxis Supp Br., p 16, citing 388 Mich at 228, fn 84.) It asserts that "defects on the face of the [Assessor's] Denial cannot be cured by information otherwise provided to the taxpayer (such as on the notice of assessment)." (*Id.*, page 14, citing *Alan*, 388 Mich at 225.[7])

This characterization of *Alan* is incorrect, and Michigan courts *since Alan* have repeatedly held that *actual notice* trumps technical defects in a notice procedure.

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[6] Praxis claims that the assessor's denial's reference to MCL 211.30 is "misleading." (Praxis Supp Br., p 16.) How a reference to a statute can be "misleading" is not well explained in their submission. A synthesis of the argument presented in their brief would seem to be that, since MCL 211.30 suggests that aboard of review *could* meet after March 9th, that it was reasonable for Praxis to assume that it *would*. The corollary is that anyone reading the statute would necessarily determine that the board *could* adjourn as early as March 9th, and so anyone seeking to invoke their rights to appeal should be particularly sensitive to that date. The reference to the statute is not misleading just because Praxis and its agents made incorrect assumptions.

[7] Praxis cites to page 225 in its pincite. This appears to be to the headnotes, as the opinion in *Alan* does not commence until 388 Mich at 233.

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In *Alan*, this Court considered the validity of Detroit Tigers' stadium bonds, assuming appellate jurisdiction following the submission of questions from the governor. Among the issues addressed in the jeremiad opinion was whether the notices published with respect to the bonds were "constitutionally sufficient." 388 Mich at 238.

The notice at issue, published in the newspaper, characterized the bonds at issue as being "revenue bonds" and also bonds "secured by the general obligation of [Wayne] County." *Id.* at 331. The former type afforded the City's resident no right to a vote, but the latter type afforded a right to vote on presentation of petitions signed by 10% of the electors. *Id.* (citations omitted). The right at issue was thus a right to referendum, with a specific 30-day deadline for its invocation. (*Id.*)

The descriptions of the bonds in published newspaper notices reviewed by the Court were contrary to the nature of the bonds, suggesting only that they were revenue bonds. *Id.* at 333. A subsequent public notice continued to describe the bonds as "revenue" bonds. *Id.* at 341. Only by reviewing the bond forms themselves or notices made to the bondholders would a taxpayer realize the bonds were otherwise and have notice that the clock on their referendum rights had started to run. *Id.* at 342-343.

The *Alan* Court held that small print, mass publication newspaper notices that incorrectly described bonds did not satisfy due process, even if a taxpayer *could have in theory* requested to review the bond documents themselves. *Id.* at 351-353. It further rejected the notion that nonspecific "general newspaper coverage" could

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alleviate due process defects in the published notices. *Id.* at 354, n 84. This latter point is the one on which Praxis seeks to rely.

The facts of *Alan* plainly present a wholly different circumstance from the one presented here, where Praxis received *actual notice* by *first class mail directed to it by name* of the dates on which the board of review would be holding its hearings. (This finding of the Tribunal is supported by competent record evidence and thus cannot be disturbed on appeal. *Michigan Props LLC*, 491 Mich at 527.) Unlike the members of the public in *Alan* who had *theoretical* access to correct information, Praxis had *actual, correct notice,* directed *specifically to Praxis*. Nothing in the assessor's denial document contravened or conflicted with the information provided in the assessor's notice of assessment, and *Alan* is thus not availing to Praxis.

Nothing in Michigan's historical jurisprudence requires that the time and place of a substantive rights hearing be included in the same document advising a claimant of the basis for a denial or revocation of their rights. Indeed, Michigan's court rules, e.g., contemplate that *notices of hearing* can and will be served wholly separate from motions and briefs. See MCR 2.119(C)(1). Further, since *Alan,* Michigan's courts have repeatedly recognized that the fundamental requirements of due process are satisfied if a party received *actual notice* notwithstanding other defects in the process, whether such notice came in the manner prescribed by statute, court rule, or otherwise. See *Gillie v Genessee Co Treasurer,* 277 Mich App 333, 356 n 12; 745 NW2d 137 (2007) ("Fundamental requirements of due process are satisfied if a party received actual notice."), disavowed in part on other grounds by *2 Crooked*

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Creek, LLC v Cass Co Treasurer, 507 Mich 1; 967 NW2d 577 (2021); *Reenders v Parker*, 217 Mich App 373, 376; 551 NW2d 474 (1996) ("[T]he Reenders contend that the rule-required notice procedure failed to satisfy constitutional due process guarantees. However, because the Reenders concede that they actually received notice three days before the hearing, we do not conclude that the Reenders were denied due process ..."); *Alycekay Co v Hasko Const Co, Inc,* 180 Mich App 502, 506; 448 NW2d 43 (1989) ("[T]he record reveals the trustee received actual notice of the claim. Therefore, the service of process which was effected satisfied fundamental requirements of due process and was not a substantial defect.").

Indeed, as this Court has recognized in the context of tax foreclosure cases, the entire point of due process is that the government employ means that are reasonable *to accomplish actual notice*. *Sidun v Wayne County*, 481 Mich 503, 509; 751 NW2d 453 (2008). Because Praxis *had actual notice here*, syllogistically, the Township satisfied due process requirements.

iii. Praxis had notice and opportunity; it rested on its rights.

The key elements of due process are: notice and opportunity. *Bonner v City of Brighton*, 495 Mich 209, 238; 848 NW2d 380 (2014). Praxis had both.

Praxis plainly understood that its EMPP application had been denied and that it needed to perfect an appeal to the board of review to preserve its rights. In February, its agent contacted the assessor and the assessor suggested that Praxis file a letter appeal. Thereafter, in early March, another agent left a voicemail for the assessor and received a response in less than 24 hours advising that it should send a letter appeal.

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Nothing in the record suggests that Praxis asked the assessor when the board of review was meeting and was given bad information. Nothing in the record suggests that the assessor refused to schedule an appointment or otherwise to allow Praxis to appear in person at the board of review. The "supporting" affidavits are bereft of any such information. (The assessor never spoke with Praxis's agent directly; instead, via voicemail, the assessor encouraged the agent on March 2nd to call or e-mail with any further questions or concerns.)

Why Praxis's agent delayed for two weeks after the assessor first advised Praxis to submit a letter appeal, or for another 8 days after the assessor's voicemail encouraged Praxis's agent again to do so, the affidavits do not disclose. But the delay was not caused by the Township, which provided clear and unequivocal direction in the notice of assessment as to the time, place, and manner of the board's scheduled meetings.

C. Praxis was required to protest before the board of review.

Since Praxis had *actual notice* of the dates of the board of review, and was not misled by the assessor or other sources as to the deadline, there is no due process violation. Nothing on the face of §9m or §9n of GPTA (or otherwise in the Tax Tribunal Act) affords a path of direct appeal to Praxis based on unrelated perceived deficiencies in the assessor's denial (e.g., the lack of reference to the need to file a combined document). These essentially non-issue technical defects do not obviate board protest requirements

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i. The Legislature specifically amended §§ 9m and 9n to make board protests mandatory.

As already noted, boards of review have been a widely-used tool in the administration of Michigan *ad valorem* taxation for over a century. Indeed, until recently, the Tribunal had *no jurisdiction over any* valuation and exemption appeals *until* a board of review had first taken a bite of the apple. See MCL 205.735(2) ("For an assessment dispute … if an exemption is claimed, the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute ….") Even today, protest to the board of review is a prerequisite for most property types—the only exceptions relate to property types not at issue here. See MCL 205.735a(3), (4)(c) (excepting, e.g., property subject to taxation under the commercial redevelopment act, 1974 PA 198, MCL 207.551) from the requirement to protest before the board of review.) These exceptions illustrate that where the Legislature *wants* to afford a petitioner a direct right of appeal for procedural reasons, it knows how to do so.

Like section 35a of the Tax Tribunal Act, sections 9m and 9n of GPTA state plainly that protests *shall* be made to the board of review. "Shall" is mandatory—i.e., "shall" means "shall." *In re Forfeiture of Bail Bond*, 496 Mich 320, 339-340 & n. 7; 852 NW2d 747 (2014). Section 35(a)(2) of the Tax Tribunal Act should be read *in pari materia* with §9(n) of GPTA as the two statutes share a common purpose. See *In re Petition for Foreclosure,* 286 Mich App 108, 111-112; 777 NW2d 507 (2009) (applying doctrine to GPTA and Tax Tribunal Act) (citing to *People v Webb*, 458 Mich 265, 274; 580 NW2d 884 (1998).)

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The legislative development of §§ 9m and 9n also helps to illustrate that the mandatory exhaustion of the board of review process in those sections aligns with the same requirement for *all* exemption determinations in § 35a of the Tax Tribunal Act.

As originally enacted, the EMPP statutes did not expressly provided for appeal rights whatsoever. See 2012 PAs 401 (§9m) and 403 (§9n). In 2013, the Legislature amended § 9n to insert a provision permissively stating that appeal from an assessor's adverse EMPP determination "*may* be made to the board of review" under *either* MCL 211.30 or 211.53b (governing qualified errors). See 2013 PA 154 (amending §9n(4).) Thereafter, in 2016, the Legislature amended §9m and §9n for the first time to expressly incorporate an appeal right to the Tax Tribunal, but it made a key change in doing so. That is, in Public Act 108 of 2016, the Legislature changed what had previously been *permissive* ("may") language regarding the board of review's role to *mandatory* language, stating that a denial "*shall* be appealed to the board of review under section 30 …" (See 2016 PA 108.) The Legislature thus expressly engrafted a *Tribunal* appeal right for EMPP denials *at the same time* it chose to shift the board process to an indisputably *mandatory* one.

There is good reason for the Tribunal to choose this mandatory language—not only to align to § 35a of the Tax Tribunal Act, but to underscore the need for administrative efficiency. Throughout the early 2010s, the Tribunal struggled with a backlog of over 40,000 cases, delaying adjudication of tax controversies in some

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instances for several years.[8] The Legislature thus had every reason to insist on the exhaustion of administrative remedies through historically successful boards of review as a precondition to taxpayers invoking the jurisdiction of the Tribunal.

D. The Tribunal has no jurisdiction and the Court of Appeals erred in reversing and remanding

i. Protest to the Board of Review is jurisdictional—not merely procedural.

In *New Covert*, decided in 2020, the Court of Appeals discussed the recent amendments to the Tax Tribunal Act which allow for direct appeal to the Tribunal for certain taxpayers. In doing so, the court held that "The legislature's statement that the assessment *may* be protested to the board or appealed directly to the Tribunal without protest to the board" for certain taxpayers "demonstrates that the direct appeal *is an exception to, not a replacement of*" the exhaustion of board remedies requirement under MCL 205.735a(3). 334 Mich App at 54 (emphasis added). *New Covert* post-dates the primary authority relied upon by Praxis and the Court of Appeals—i.e. *Parkview Mem Ass'n v Livonia*, 183 Mich App 116; 454 NW2d 169 (1990)—by some 30 years.

Byron Township appropriately relies on *Electronic Data Sys Corp v Twp of Flint*, 253 Mich App 538, 547-548; 656 NW2d 215 (2002) for the precept that an appeal to the board of review is jurisdictional. The same is obvious on the face of § 35a of

[8] See AP, *Michigan Tax Tribunal deals with appeal backlog*, WKAR Public Media, published May 12, 2011, available at https://www.wkar.org/2011-05-12/michigan-tax-tribunal-deals-with-appeal-backlog (last accessed 6/20/24).

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the Tribunal Act (which requires protest to the board "before the tribunal acquires jurisdiction") and repeatedly recognized as black letter law in learned treatises:

> For an assessment dispute as to the … exemption of property, the assessment must be protested before the board of review *before the Tax Tribunal acquires jurisdiction*. [See Michigan Pleading and Practice § 89A:10 (emphasis added).]

> If a tax assessment is unjust, the taxpayer's exclusive remedy is to appear before the board of review for correction; for an assessment dispute as to the valuation or exemption of property, the assessment must first be protested before the board *before the Michigan tax tribunal acquires jurisdiction of the dispute*. Such procedure gives the board of review the opportunity to hear a taxpayer's objections and to take corrective action as to an assessment, and has been characterized as a condition precedent to the tax tribunal's exercise of its jurisdiction to review the assessment of a taxpayer's property. [Mich Civ Jur, MIJUR TAX § 265 (2024) (emphasis added) (citations omitted).]

(A dispute over EMPP exemptions is an assessment dispute as to the exemption of property, and thus falls plainly under the ambit of both MCL 211.9m/9n *and* MCL 205.735a, which are consistent with one another regarding board protest requirements.)

The latter treatise goes a step further, noting that a protest to the board of review is "in the nature of a procedural prerequisite related to the exhaustion of administrative remedies." *Id.* This has been recognized by Michigan courts for four decades. See *Turner v Lansing Twp*, 108 Mich App 103, 111; 310 NW2d 387 (1981); see also *Johnson v State of Michigan*, 113 Mich App 447, 462; 317 NW2d 2d 652 (1982) ("The doctrine of exhaustion of administrative remedies … while a limit on the tax tribunal's jurisdiction in requiring protest before the board of review, also is a limit

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on the jurisdiction of any court as the tax tribunal is the last step for administrative review of property tax questions").

Indeed, GPTA and the Tax Tribunal Act establish a comprehensive administrative and procedural system, starting with the determinations of the assessor and ending with appeals to this Court. Board of review protests, mandated as they are by both §35a of the Tax Tribunal Act and §9n of GPTA, fit neatly within the policy justifications for administrative exhaustion—i.e., with the expediency of permitting the administrative process to function, the use of expertise needed due to technical nature of the subject matter, and the need to lessen the burden on judicial and administrative agency resources. See *Judges of the 74th Judicial Dist v Bay County*, 385 Mich 710, 727-728; 190 NW2d 219 (1971). Conversely, "untimely resort to the courts may result in delay and disruption of an otherwise cohesive administrative system," and—crucial here—"successful agency settlement of the dispute may render a judicial resolution unnecessary." *Provincial House, Inc v Dep't of Soc Servs, Provincial House, Inc v Department of Social Services*, 167 Mich App 1, 10-11, 422 NW2d 241 (1988) (citations omitted).

Praxis's Supplemental Brief discusses at some length its successful EMPP filing in 2022, ostensibly for the point that the Township's denial is form over substance. (See Praxis Supp Br, pp 5-6.) To the contrary, the 2022 experience illustrates precisely *why* the board of review is an essential component of the Legislature's administrative construct for tax appeals. Because it filed a timely 2022 appeal, "[Praxis] was able to resolve the Township's questions at the board of review"

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and obtain the exemption. *Id.* The board was not a procedural hurdle but a substantive forum for error correction in that instance. Praxis's *failure* to exhaust administrative remedies in 2021, starting with an untimely letter submission, has now led to three years of litigation, with the cost falling unevenly on the Township which—as noted above—shares in only a portion of the tax revenues at issue.

Failure to exhaust administrative remedies is treated by Michigan courts as a jurisdictional issue—not a prudential or discretionary one—and courts approach it in the same manner as other doctrines of justiciability. See *Wikman v City of Novi*, 413 Mich 617, 646-47; 322 NW2d 103 (1982); *WA Foote Memorial Hospital v Department of Public Health*, 210 Mich App 516, 522-523; 534 NW2d 206 (1995) (finding circuit court erred in assuming jurisdiction where hospital had failed to exhaust administrative remedies regarding certificate of need denial).

The failure to exhaust remedies by appearing at the board of review necessarily deprives the Tribunal of jurisdiction.

ii. **The Court of Appeals erred in invoking equity and remanding.**

As Byron Township aptly notes, the MTT, a creature of statute, plainly lacks equitable powers and cannot grant a request for a delayed appeal. *Electronic Data Sys Corp*, 253 Mich App at 547-548. Late appeals—even those late on minor technicalities—deprive the Tribunal of jurisdiction. *General Motors Corp v City of Detroit*, 141 Mich App 630, 633-634; 368 NW2d 739 (1985) (Tribunal lacked jurisdiction where letter was not received by deadline).

Because there is no due process violation here, and because the Legislature afforded a statutory administrative remedy to Praxis that it did not timely invoke,

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equity is simply unavailable. Even a circuit court, with full equitable powers, cannot exercise jurisdiction over matters where a statutory remedy is afforded and not first exhausted by a petitioner. *International Business Machines v Dep't of Treasury*, 75 Mich App 604, 609; 255 NW2d 702, 704 (1977) ("[T]he statute makes it clear that the circuit court's subject matter jurisdiction in this case depends upon exhaustion of administrative remedies. Even if this issue is not raised by the parties, the circuit court is duty bound to restrict its operations to be within the limits of its statutorily fixed jurisdiction.")

In similar vein, the Legislature has identified the types of errors that *should* be afforded a remedy even if identified beyond the ordinary statutory deadlines. That is, under MCL 211.53b(1), corrections of certain "qualified errors" can be made through the board of review for the current year *and the preceding year,* even if no appeal was previously effected; errors regarding transfers of ownership and uncapping events can be appealed *up to four years* after the error occurs. MCL 211.27a(4). The substantive error of which Praxis complains is not included within this list. If the Legislature wanted to open the door that the Court of Appeals has now opened, it plainly knows how to do so. It has not.

iii. The Court of Appeals' decision opens the door to litigation that the Legislature sought to prevent.

Absent exemption, every property owner pays taxes every year. Every year, millions of Michiganders face statutory tax deadlines, and every year, a multitude of Michiganders miss those deadlines for both good and bad reasons. Strict adherence to statutory time limitations is essential in tax matters, borne of the exigencies of

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taxation and the administration of local government. *McQuillin, The Law of Municipal Corporations,* MUNICORP § 44:155 (2023) (citing *Prime Accounting Dep't v Township of Carney's Point*, 212 NJ 493, 507; 58 A3d 690 (2013).) Contrary to this principle, the Court of Appeals decision, if permitted to stand, will annually invite a significant number of aggrieved taxpayers to pursue equitable remedies through costly appeals that have heretofore been avoided through judicial restraint.

iv. Equity should not be used in the face of a specific statutory mandate.

The Courts of Appeals undoubtedly possesses equitable power, but such power has traditionally been reserved for unusual circumstances. *Devillers v Auto Club Ins Ass'n,* 473 Mich 562, 590; 702 NW2d 539 (2005). A court's equitable power "is not an unrestricted license for the court to engage in wholesale policymaking …." *Id.*

Equity further only applies in the absence of a specific statutory mandate. *Martin v Sec'y of State*, 280 Mich App 417, 430; 760 NW2d 726 (2008) (O'Connell, PJ, dissenting), rev'd by *Martin v Sec'y of State*, 482 Mich 956; 755 NW2d 153 (2008) (adopting the opinion in relevant part of Judge O'Connell). In *Martin*, a potential candidate for public office received bad information regarding signature requirements from the Secretary of State. The candidate fell short of the statutory requirement, and the trial court exercised equity and placed the candidate on the ballot. The Court of Appeals majority affirmed. *Id.* at 430. The Michigan Supreme Court, citing the dissenting opinion, reversed, holding that equity was improperly applied given the clear statutory requirement. *Martin*, 482 Mich at 956. Even where a "statute is difficult to follow" that "does not give anyone the right to not follow it. If

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it did, for example, *no one would ever have to pay taxes*." *Martin*, 280 Mich at 438 n 5 (emphasis added).

These principals apply equally, if not even more strongly, in tax cases, where the Legislature has chosen not to confer equitable powers on the Tax Tribunal. Except in small part, assessors and boards of review do not share in the tax revenues that are generated from their work. Municipal assessment and collection of taxes is but the front gate to a garden of state government finance (i.e. property taxes pay for airports, transit authorities, community colleges, and libraries among many other functions). For this reason, even in instances where assessors give bad advice or make mistakes (facts which are not present here), equity will not apply to prevent the otherwise valid collection of tax liabilities to support these functions. *Langford v Auditor General,* 325 Mich 585, 591; 39 NW2d 82 (1949) ("The collection of duly levied taxes for governmental purposes is a governmental function and the collection officer cannot, by mistake or misinformation, work an estoppel, enforceable in a court of equity."); *Rayovac Corp v Dep't of Treasury*, 264 Mich App 441; 691 NW2d 57 (2004) (finding no estoppel where Department revoked previous formal pronouncements in administrative bulletins).

Indeed, in *Electronic Data Systems Corp,* 253 Mich App 538, the court held that the Tribunal committed no error in refusing to exercise its equitable powers, noting that the Tribunal has no powers of equity. *Id.* at 547-548. The Court of

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Appeals further did not insert itself[9] into the situation, even where inequities were present—i.e., it did not intervene to help the taxpayer where the only procedural defect in invoking the Tribunal's jurisdiction was a difference between sending a letter by certified mail (with a recorded mailing date) and by first class mail (without one).

There are no such inequities here, and the case for the Court of Appeals' decision to remand and waive jurisdictional requirements is all the less supported for that reason. Byron Township gave no bad advice—the assessor, who never spoke directly with Praxis's agent, sent Praxis a *direct letter* advising it of the dates, times, and locations of the board of review; the letter advised that letter appeals should be received by March 5th. On March 2nd, the assessor left a voicemail encouraging Praxis's agent to call or e-mail with any further questions, and recommending that she file a letter appeal. That the agent waited 8 more days—indeed, until *after hours* on March 10th—to send an e-mail was a delay in which the Township played no part.

[9] This Court provides a recent example of such restraint in the face of the Legislature's comprehensive administrative framework for property taxation. Earlier this month, it denied an application for leave in a circumstance where a petitioner failed to perfect an EMPP filing due entirely to circumstances beyond its control—i.e., where the US post office misplaced a "combined document" submission for a month and did not return it until well after the board of review had adjourned. See *ProQuest LLC v Twp of Ypsilanti*, ___ Mich ___; ___ NW2d ___ (Order issued June 14, 2024) (MSC Case No. 166549). The concurrence (Welch, J.) highlighted the "inequities of the situation," noting that Plaintiff was stymied in what appeared to be "good faith effort[s]" to invoke the jurisdiction of the board of review and Tribunal. (Slip op, p. 2.) Nonetheless, the Concurrence agreed that "no appeals can occur after the board has adjourned," and that the MTT "lacks equitable authority to account for plaintiff's unique circumstances." (*Id.*)

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The Court of Appeals decision conflicts with the successful framework that has funded government services in the State of Michigan since its founding. Equity should not intervene where the Legislature has expressed policy through its enactments, and the Court of Appeals should be reversed.

VI. CONCLUSION

Amicus, the Michigan Assessor's Association, respectfully requests that this Court reverse the decision of the Court of Appeals and otherwise affirm the determination of the Tribunal. In the alternative, Amicus supports Byron Township's request that the application for leave to appeal be granted.

Submitted Respectfully

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Dated: June 26, 2024

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CERTIFICATE OF COMPLIANCE

I certify that this Brief Amicus Curiae of the Michigan Assessor's Association in Support of Respondent-Appellant Byron Township complies with the type-volume limitation set forth in MCR 7.212(B). This brief uses a 12-point proportional font (Century), and the word count, based on the word count of the word-processing system used to produce this document and manual counting of words as they appear in embedded graphics, for this brief is 8,723.

*/s/*Ryan M. Shannon
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Dated: June 26, 2024