STATE OF MICHIGAN
IN THE COURT OF APPEALS

PINEWOOD CIRCLE, LLC,

Petitioner-Appellant, COA No. 367182

v. MOAHR Docket No 21-002697

CITY OF ROMULUS,

Respondent-Appellee.
_______________________________________/

JOINT BRIEF OF THE MICHIGAN CHAMBER OF COMMERCE, APARTMENT ASSOCIATION OF MICHIGAN, AND INTERNATIONAL COUNCIL OF SHOPPING CENTERS, INC. d/b/a ICSC AS AMICI CURIAE IN SUPPORT OF APPELLANT

Carl Rashid, Jr. (P23915)
DYKEMA GOSSETT PLLC
400 Renaissance Ctr, 36th Floor
Detroit, MI 48243-1502
crashid@dykema.com
(313) 568-5422

Mark J. Magyar (P75090)
DYKEMA GOSSETT PLLC
201 Townsend St., Suite 900
Lansing, MI 48933
mmagyar@dykema.com
(616) 776-7523

Attorneys for Amici Curiae

RECEIVED by MCOA 2/6/2024 2:01:07 PM

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

IDENTITY AND INTERESTS OF AMICI CURIAE iv

I. SUMMARY OF THE ARGUMENT 1

II. STANDARD OF REVIEW 3

III. ARGUMENT 4

A. Following Sales is Illegal 4

B. Summary Disposition Was Not Proper 7

IV. CONCLUSION 12

CERTIFICATE OF COMPLIANCE 14

RECEIVED by MCOA 2/6/2024 2:01:07 PM

TABLE OF AUTHORITIES

Page(s)

CASES

Better Integrated Sys v Dept of Treasury
Unpublished per curiam opinion of the Court of Appeals decided Mar 22, 2016 (Docket No 325001) 9, 10

Briggs Tax Service, LLC v Detroit Pub Schools,
485 Mich 69, 780 NW2d 753 (2010) 3, 4

Chaofu Qin v Twp of Waterford
Unpublished per curiam opinion of the Court of Appeals decided June 25, 2015 (Docket No 320859) 5, 6

Detroit Lions, Inc v City of Dearborn,
302 Mich App 676, 840 NW2d 168 (2013) 4

Dykes v William Beaumont Hosp,
246 Mich App 471, 633 NW2d 440 (2001) 8

Georgetown Place Co-op v City of Taylor,
226 Mich App 33, 572 NW2d 232 (1997) 4

Huron Ridge, LP v Ypsilanti Twp,
275 Mich App 23, 737 NW2d 187 (2007) 4

In re Grant,
250 Mich App 13, 645 NW2d 79 (2002) 4

Lincoln v Gen Motors Corp,
461 Mich 483, 607 NW2d 73 (2000) 4

Meijer, Inc v City of Midland,
240 Mich App 1, 610 NW2d 242 (2000) 3

Michigan Bell Tel Co v Dep't of Treasury,
445 Mich 470, 518 NW2d 808 (1994) 3

Midland Cogeneration Venture LP v Naftaly,
489 Mich 83, 803 NW2d 674 (2011) 5

Oak Park Crown Pointe, LLC v City of Oak Park,
Unpublished per curiam opinion of the Court of Appeals decided Dec 12, 2019 (Docket No 345819) 10, 11, 12

RECEIVED by MCOA 2/6/2024 2:01:07 PM

Oldenburg v Dryden Twp,
198 Mich App 696, 499 NW2d 416 (1993) 4

Robinson v Wolverine Mut Ins Co,
512 Mich 926, 994 NW2d 500 (2023) 9

Spiek v Dep't of Transportation,
456 Mich 331, 572 NW2d 201 (1998) 4

SSC Assocs Ltd Partnership v General Retirement Sys,
192 Mich App 360, 480 NW2d 275 (1991) 9

Wexford Med Group v City of Cadillac,
474 Mich 192, 713 NW2d 734 (2006) 3

RULES

MCR 2.116(C)(10) 9

MCR 7.212(B) 14

MCR 7.212(H)(3) iv

MCR 7.215(C)(1) 6

STATUTES

MCL 211.27 .... *passim*

CONSTITUTIONS

Const 1963, art 6, § 28 3

Const 1963, art 9, § 3 .... 2, 5, 6

RECEIVED by MCOA 2/6/2024 2:01:07 PM

IDENTITY AND INTERESTS OF AMICI CURIAE[1]

This brief of amici curiae is submitted jointly on behalf of the Michigan Chamber of Commerce (the "Chamber"), the Apartment Association of Michigan ("AAM"), and the International Council of Shopping Centers, Inc. d/b/a ICSC ("ICSC") (together, "Amici"). Amici support the Petitioner-Appellant Pinewood Circle, LLC ("Pinewood") in seeking reversal of the decision of the Michigan Tax Tribunal ("MTT") granting summary disposition in favor of Respondent-Appellee the City of Romulus (the "City"). Specifically, Amici support a decision from this Court reversing the MTT because, at minimum, there exist material questions of disputed fact that preclude summary disposition and require an evidentiary hearing on the merits.

1. The Chamber stands up for Michigan job providers in the legislative, political and legal arenas while working to build a stronger Michigan for all. It is the unified voice of approximately 5,000 member businesses of every size and industry in all 83 Michigan counties as well as trade associations and local chambers of commerce, collectively employing over a million Michiganders. Founded in 1959, the Michigan Chamber of Commerce works tirelessly to ensure Michigan is the best place to do business, live, work and play. One of the key pillars that drives the Chamber is being the voice of business by advancing member priorities through legislative, legal and political action.

---

[1] Pursuant to MCR 7.212(H)(3), amici curiae affirm that no counsel for a party has written this brief in whole or in part, and that no person or entity, other than amici curiae, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief.

RECEIVED by MCOA 2/6/2024 2:01:07 PM

2. The AAM was formed to be the voice of the apartment industry on the state and local levels. AAM's strong advocacy on issues such as security deposit law, rent control and apartment inspection, among others, have helped to shape law and policy over the years.

3. ICSC is the trade association of the shopping center and retail real estate industry. Founded in 1957, the association represents developers and operators of retail properties in North America as well as the tenants who occupy them, ranging from shopping center owners, developers, managers, marketing specialists, investors, retailers and brokers, as well as academics and public officials. ICSC's mission is to advance the industry by promoting and elevating the marketplaces and spaces where people shop, dine, work, play and gather as foundational and vital ingredients of communities and economies. In furtherance of this mission, ICSC represents its members through advocacy on important public policy issues and through filing amicus curiae briefs in pending appeals on issues of importance to the retail real estate industry. Its nearly 50,000 members represent approximately 115,000 marketplaces that generate about 30,000,000 jobs in the United States.

ICSC currently has 862 members in Michigan. The latest statistics for 2022 indicate 3,832 centers providing 911,741 jobs (which accounted for a 16% share of the total jobs), generating $276 billion in sales (44.5% share of the gross domestic product). This market activity accounted for $16.6 billion collected in State sales taxes for Michigan as well as $739.7 million in property taxes, with $560 million spent

RECEIVED by MCOA 2/6/2024 2:01:07 PM

in construction and redevelopment. The statistics for 2021 were similar and ICSC expects that these numbers remained consistent through the present.

4. Amici are keenly interested in this case. Pinewood's appeal raises both taxation valuation issues under MCL 211.27(6) as well as procedural issues whenever a taxpayer appeals to the Michigan Tax Tribunal. Amici's members are interested in their capacities as businesses, real property owners, taxpayers, petitioners to the MTT, and purchasers of real properties, including retail and multi-family residential unit buildings in Michigan.

The issues in this appeal apply to all types of properties, not just multi-family residential units. As a policy matter, the hardship on small retail businesses is axiomatic. Real estate taxes for retail properties, like the properties owned by many of the Chamber's and ICSC's Members, are a pass-through obligation that are generally paid by the tenant, subject to the terms of the lease. If a property's taxes are doubled in a particular year, each tenant in the shopping center may also see a large increase in taxes. Many small retail businesses are struggling to survive and a large increase in a tax expense may easily be enough to put them out of business. Also, if one small business is paying double the amount of taxes as its competitors merely because the business recently purchased its property, it will be at a competitive disadvantage, which is magnified at a time like this when inflation and employee costs are high. Depending on how this case is resolved it could have a chilling effect on businesses' appetite for doing business in Michigan if they stand to face extreme additional, disparate taxation based upon the purchase price that wipes

RECEIVED by MCOA 2/6/2024 2:01:07 PM

out any investment, taxation or other benefits in finding such properties to purchase, or if they perceive they are subject to less than fair proceedings before the MTT.

RECEIVED by MCOA 2/6/2024 2:01:07 PM

I. SUMMARY OF THE ARGUMENT

This matter concerns assessment uniformity principles and valuation under MCL 211.27(6), which provides that assessors shall determine the value of properties that recently sold using the same valuation method as all other similar properties, as well as the weight the MTT may give to an assessor's affidavit at summary disposition when it is inconsistent with other evidence.

The Michigan State Tax Commission has interpreted MCL 211.27(6) to mean that it is unlawful to single out recently sold properties for adjustment of valuation characteristics. Pinewood purchased a 156-unit multi-family property (the "Property") located in the City in 2020. The following year, the City's assessor more than doubled the Property's Assessed Value, State Equalized Value, Taxable Value and True Cash Value (collectively, the "Values").

Pinewood assembled and presented compelling evidence that the City's assessor changed data in the software used to calculate the Values regarding characteristics of the Property which resulted in the Values closely tracking the purchase price that Pinewood recently paid to acquire the Property (within 0.6%). Pinewood believes the assessor did so intentionally so that the Values would reflect the recent sale price. If Pinewood is correct about what it believes the City did, the Michigan Constitution, State Tax Commission, MCL 211.27(6), and decisions of this Court all recognize that its conduct was illegal.

The City assessor denied having chased Pinewood's sale in reaching the Values. The assessor could not recall her reasons for her changes in the data at her

RECEIVED by MCOA 2/6/2024 2:01:07 PM

deposition, but, in her subsequent affidavit submitted at summary disposition (executed seventeen days after her deposition), she regained her recall and provided details. As a result, the parties' respective evidence epitomized disputed questions of material fact that were not amenable to summary disposition, as the MTT initially found in its May 11, 2023 order denying both parties' motions for summary disposition.

On July 28, 2023, the MTT *sua sponte* reconsidered its earlier denial of summary disposition and granted summary disposition for the City. The MTT based its grant of summary disposition for the City upon the assessor's written affidavit testimony.

Amici agree with Pinewood that, if the City assessor chased Pinewood's sale under the guise of updating certain value data for the purpose of bringing the Values in line with the recent purchase price, and if such practice is upheld, it would nullify MCL 211.27(6) and render the Uniformity Clause of the Michigan Constitution, Article IX, Section 3, toothless. An assessor would have only to cleverly cover his or her tracks with pretextual, marginally supportable changes to a property's characteristics, even where those characteristics existed before the sale but were never before changed, to achieve a desired result, which is contrary to the policy of this State as expressed by the Legislature and under the State Constitution.

Amici do not endeavor with this brief to resolve these disputed issues of material fact. But the MTT should not have done so, either. At minimum, the evidence presented by Pinewood tending to show sale-chasing as compared to the

RECEIVED by MCOA 2/6/2024 2:01:07 PM

assessor's denials and stated justifications in her affidavit should have presented material questions of disputed fact precluding summary disposition and warranting a merits hearing. The MTT's adoption of the assessor's affidavit testimony at the summary disposition stage as being more credible than, and outweighing, Pinewood's evidence, without the opportunity for Pinewood to cross examine the assessor or for the MTT to assess her credibility under live testimony at a hearing, is deeply concerning to Amici's and its members. When Amici's members have issues that they wish to have reviewed by the MTT, they expect that their petitions will be given a fair review under the applicable rules governing all aspects of the proceeding, including summary disposition. It would be bad policy to hold that the MTT may defer to or deem more credible the affidavit of an assessor at the summary disposition stage when presented with conflicting evidence by the petitioner, as appeals to the MTT would seem perfunctory and fruitless without a means for true enforcement of constitutional and statutory law, which could cause businesses to avoid Michigan real estate purchase transactions.

II. STANDARD OF REVIEW

"The standard of review of Tax Tribunal cases is multifaceted." *Briggs Tax Service, LLC v Detroit Pub Schools*, 485 Mich 69, 75; 780 NW2d 753 (2010), citing *Wexford Med Group v City of Cadillac*, 474 Mich 192, 201; 713 NW2d 734 (2006). Since fraud is not claimed, "this Court reviews the Tax Tribunal's decision for misapplication of the law or adoption of a wrong principle." *Briggs Tax Service, LLC*, 485 Mich at 75, citing *Michigan Bell Tel Co v Dep't of Treasury*, 445 Mich 470, 476;

RECEIVED by MCOA 2/6/2024 2:01:07 PM

518 NW2d 808 (1994); *see also* Const 1963, art 6, § 28; *Meijer, Inc v City of Midland*, 240 Mich App 1, 5; 610 NW2d 242 (2000). The MTT's factual findings are upheld unless they are not supported by competent, material, and substantial evidence. *Georgetown Place Co-op v City of Taylor*, 226 Mich App 33, 43; 572 NW2d 232 (1997).

"But when statutory interpretation is involved, this Court reviews the Tax Tribunal's decision de novo." *Briggs Tax Service, LLC*, 485 Mich at 75, citing *Lincoln v Gen Motors Corp*, 461 Mich 483, 489-490; 607 NW2d 73 (2000). And this Court reviews "de novo the grant or denial of a motion for summary disposition." *Briggs Tax Service, LLC*, 485 Mich at 75, citing *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). If the MTT fails to base its decision on competent, material, and substantial evidence, it is an error of law requiring reversal. *Oldenburg v Dryden Twp*, 198 Mich App 696, 698; 499 NW2d 416 (1993). Substantial evidence is any evidence that reasonable minds would accept as sufficient to support the MTT's decision. *Detroit Lions, Inc v City of Dearborn*, 302 Mich App 676, 691; 840 NW2d 168 (2013), citing *In re Grant*, 250 Mich App 13, 18-19; 645 NW2d 79 (2002).

III. ARGUMENT

A. <u>Following Sales is Illegal</u>.

The "true cash value" of property is synonymous with the "fair market value" of the property. *Huron Ridge, LP v Ypsilanti Twp*, 275 Mich App 23, 28; 737 NW2d 187 (2007). MCL 211.27(6) provides, in relevant part:

> Except as otherwise provided in subsection (7), the purchase price paid in a transfer of property *is not the presumptive true cash value* of the property transferred. In determining the true cash value of transferred property, an assessing officer shall assess that property *using the same*

RECEIVED by MCOA 2/6/2024 2:01:07 PM

> *valuation method used to value all other property of that same classification in the assessing jurisdiction*. . . .

(emphasis added). The term "purchase price" means "the total consideration agreed to in an arms-length transaction and not as a forced sale paid by the purchaser of the property." *Id*.

Soon after this statute was enacted and had been in place for a couple of years, the Michigan State Tax Commission ("STC") issued its 1997 Bulletin Number 19 warning all assessors that the uniformity requirement embodied in MCL 211.27(6) (then under subpart (5)) is a constitutional requirement under Article IX, Section 3 of the Michigan Constitution. (Appellant's Appendix (cited as "AA") p 25a.) The reason for the STC issuing this bulletin was that it "was very concerned about reports that some assessors have engaged in the illegal practices of 'following sales' and assessing over 50% of true cash value." (AA24a.) The STC was clear: "'Following Sales' is both UNCONSTITUTIONAL AND ILLEGAL." (*Id*, emphasis in original.)

Amici respectfully submit that the STC's bulletin, although itself not legally binding, was legally correct based upon authority of this Court and the Michigan Supreme Court. The Uniformity Clause of the Michigan Constitution, as applied by the Michigan Supreme Court, provides "taxpayers [with] a private right to ensure that their property is taxed the same as similarly situated property." *Midland Cogeneration Venture LP v Naftaly*, 489 Mich 83, 97; 803 NW2d 674 (2011); Const 1963, art 9, § 3. Since the STC's 1997 bulletin, MCL 211.27(6) has been consistently applied by this Court in the manner advised under the bulletin. *See, eg*, *Chaofu Qin v Twp of Waterford*, unpublished per curiam opinion of the Court of Appeals decided

RECEIVED by MCOA 2/6/2024 2:01:07 PM

June 25, 2015 (Docket No 320859) (citing both the Uniformity Clause of the Michigan Constitution and the language of MCL 211.27(6) in rejecting the argument that a 2012 sale price controlled the 2013 TCV).[2] (Amici Appendix ("Amici App") p 02.) Thus, it is "illegal" for assessors to "follow sales" in assessing the true cash values of properties. (AA24a-25a; MCL 211.27(6).)

Amici have familiarity with the issues involved in the purchase and taxation of real properties like the Property purchased by Pinewood. Amici respectfully submit that it would be illegal under MCL 211.27(6) to permit valuations by assessors that would effectively permit veiled sale chasing under the guise of marginally supportable data changes to adjust the values of recently purchased properties that are really designed to closely match or come very close to the recent purchase price. If it is true that the City assessor chased Pinewood's sale under the guise of updating certain values, and if such practice is upheld, it would nullify MCL 211.27(6) and render the Uniformity Clause of the Michigan Constitution, Article IX, Section 3, toothless, which is contrary to the policy of this State as expressed by the Legislature and under the State Constitution.

As set forth below, Amici respectfully submit that, in such cases where, as here, compelling circumstantial or other evidence suggest possible sale chasing, there must

---

[2] Pursuant to MCR 7.215(C)(1), Amici state that they cited three unpublished decisions of this Court in this brief because each decision involved this Court's review of an MTT decision on issue(s) bearing on the issues presented in this appeal. Copies of those three unpublished decisions are included in Amici's Appendix.

RECEIVED by MCOA 2/6/2024 2:01:07 PM

be a question of material fact entitling the taxpayer to an evidentiary hearing in the MTT even where the assessor denies having chased a sale in an affidavit.

B. <u>Summary Disposition Was Not Proper</u>.

The City does not dispute the illegality of following sales but claims that the assessor did not engage in this practice. The City also does not dispute that the large increase in the Values of Pinewood's Property occurred because the City's assessor changed certain property characteristics used in the valuation software that Michigan assessors typically use, but the City contends that the changes were legitimate. The City based its defense, and the MTT based its decision, upon the affidavit of the City's assessor, which the City submitted with the summary disposition briefing. Pinewood had earlier deposed the assessor but her later affidavit contained new assertions of fact, for which Pinewood never had the opportunity to cross examine her. The assessor's statements were contrary to the evidence presented by Pinewood tending to show, at least circumstantially, that the assessor chased the sale of the Property to Pinewood in 2020 in arriving at the more than doubled Values for the Property for 2021, which came to within 0.6% of the 2020 sale price.

Of course, Amici are in no position to resolve these disputed issues of fact, but neither was the MTT. Maybe the assessor is credible; maybe she is not. Maybe the assessment was done legally for the reasons set forth by the assessor in her affidavit; maybe Pinewood's belief of a sale-chasing motive has merit. But Amici are gravely concerned by the MTT's virtual adoption of the assessor's affidavit testimony at the summary disposition stage. When Amici's members have similar issues that they

RECEIVED by MCOA 2/6/2024 2:01:07 PM

wish to have reviewed by the MTT, they expect that their petitions will be given a fair review under the applicable rules governing all aspects of the proceeding, including summary disposition. It would be bad policy to hold that the MTT may defer to or deem more credible the affidavit of an assessor than competing evidence at the summary disposition stage when presented with conflicting evidence by the petitioner, as appeals to the MTT would seem perfunctory and fruitless.

The MTT erred in believing that it could grant summary disposition for the City on the record of this case. The MTT correctly recited summary disposition rules and standards, (MTT's July 28, 2023 Final Opinion and Judgment ("FOJ") pp 16-18), but failed to correctly apply them when determining, based on the assessor's affidavit, that there no was no genuinely disputed issue of material fact and the City was entitled to judgment as a matter of law.

The MTT correctly stated that it was to give "the benefit of reasonable doubt to the opposing party" and that it was "not permitted to assess credibility or to determine facts" in deciding "whether a genuine issue of any material fact exists to warrant a trial." (*Id.*) The MTT also noted Pinewood's position that the assessor had failed "to testify regarding the value increasing changes to the subject property record card" at her deposition." (FOJ p 20.) There is no explanation provided by the assessor for how or why her memory was refreshed by the time of executing her affidavit (seventeen days after her deposition) after she was not able to provide answers at her deposition on the same topics due to lack of recollection. *See Dykes v William Beaumont Hosp*, 246 Mich App 471, 481; 633 NW2d 440 (2001) ("a party who has

RECEIVED by MCOA 2/6/2024 2:01:07 PM

been examined at length on deposition" cannot "submit[ ] an affidavit contradicting his own prior testimony") (cite omitted); *see also Robinson v Wolverine Mut Ins Co*, 512 Mich 926; 994 NW2d 500 (2023) (Zahra, J, dissenting) (noting "the sham-affidavit rule" which "applies to statements contradicting prior deposition testimony"). The MTT also noted that the assessor had "no explanation" for not having made the same changes to the Property value pre-sale in 2019 when the assessor had "last physically inspected the subject property in June 2019 and made no value increasing changes to the property record card for the 2020 assessment," (*id*), even though the material characteristics of the Property that were changed for 2021 were also present in 2019.

Despite all of this, the MTT resolved the assessor's credibility in her favor without giving the benefit of the doubt to Pinewood's contradictory evidence. The MTT stated that its grant of summary disposition for the City was due to its "further review of the property record cards submitted by both parties [that] supports [the assessor's] Affidavit." (FOJ p 21.) But where, as here, a party supports its summary disposition motion "only by an affidavit from" a key witness "whose credibility may be crucial to resolution of the disputed issue of fact," the affidavit is not sufficient to establish an entitlement to summary disposition. *See SSC Assocs Ltd Partnership v General Retirement Sys*, 192 Mich App 360, 366; 480 NW2d 275 (1991).

In *Better Integrated Sys v Dept of Treasury*, unpublished per curiam opinion of the Court of Appeals decided Mar 22, 2016 (Docket No 325001) (Amici App pp 5-12), this Court reversed the MTT's grant of summary disposition and remanded. This Court concluded that "summary disposition under MCR 2.116(C)(10) would have

RECEIVED by MCOA 2/6/2024 2:01:07 PM

been premature" because the party opposing summary disposition "had requested taking the depositions of the affiants who had signed the affidavits," and the "depositions could potentially undermine the affiants' claims, thereby having a direct bearing on" a material issue of fact in the case. (Amici App p 12.) Although the procedural posture is a little different here, the result should be the same. Pinewood indeed deposed the assessor, but she did not have recollection at that time sufficient to answer Pinewood's questions. Having later provided a detailed affidavit, without explanation as to how the assessor's recollection was refreshed, Pinewood should have been permitted to either re-depose the assessor or cross examine her at an evidentiary hearing, which could have "undermine[d] the affiants' claims[.]" *See id.*

Similarly, in *Oak Park Crown Pointe, LLC v City of Oak Park*, unpublished per curiam opinion of the Court of Appeals decided Dec 12, 2019 (Docket No 345819) (Amici App pp 13-20), this Court reversed the MTT's grant of summary disposition and remanded. The Court stated: "Because a genuine issue of fact existed, the MTT erred by granting respondent summary disposition." (Amici App p 20.) And, "[o]n remand, the MTT *should develop the record fully* so that it may make a determination *supported by competent, material, and substantial evidence* on the whole record regarding" the disputed issue. (*Id* (emphasis added).)

Similar to what occurred here, the petitioner in *Oak Park Crown Pointe, LLC*, purchased property in 2017 and, after the purchase, "in July 2018, petitioner received a summer tax bill stating that the property had a TCV [ ] and an assessed value (AV) . . . [that] represented an increase of more than 150% in the property's TCV[.]" (Amici

RECEIVED by MCOA 2/6/2024 2:01:07 PM

App p 13.) Similar to this case, the petitioner argued that the valuation method respondent used for its property differed from the valuation method used for all other commercial properties within the city and that the taxes levied and collected were invalid and unlawful under MCL 211.27, including because the 2018 assessment violated petitioner's "constitutional rights to uniformity, equal protection, and due process of law." (*Id.*) But unlike here, the petitioner also made a notice argument, contending that it never received a 2018 notice of assessment for the property and it did not learn of the increase in valuation until it received the summer tax bill after July 1, 2018.

When the city sought summary disposition on the notice issue, it provided various documents from the USPS as well as the "affidavit of Joseph Wujkowski" in trying to prove that it mailed the disputed notice to the petitioner. (Amici App p 14.) The petitioner supplied competing evidence and denied having received the notice. The MTT found that "Wujkowski's affidavit established that the notice of assessment had been mailed" and granted summary disposition for the city. (Amici App p 15.) On appeal, the petitioner argued that, "at the very least, a genuine issue of material fact exists whether respondent provided notice by mailing the assessment to petitioner . . . ." (Amici App p 18.) This Court agreed with petitioner in reversing the MTT. This Court recited the evidence submitted by both parties, including affidavits, and concluded that, when "[v]iewing the evidence in this case in the light most favorable to petitioner, competent, material, and substantial evidence on the whole record did not support" summary disposition, and "[a]t the very least, petitioner established the

RECEIVED by MCOA 2/6/2024 2:01:07 PM

existence of a genuine issue of material fact regarding whether respondent provided petitioner the requisite notice or failed to do so and thereby deprived petitioner of due process." (Amici App p 20.) In other words, an affidavit submitted by the city attesting to its having mailed the notice was not sufficient to warrant summary disposition for the city where it was a disputed issue with countervailing evidence from petitioner.

The results of the above cases should apply here. The assessor submitted an affidavit denying sale-chasing and offering her reasoning for making various value changes to the Property for 2021 after failing to provide such testimony to Pinewood at her deposition. This affidavit was not sufficient, by itself, to warrant summary disposition for the City, and required the MTT to improperly find the assessor more credible than the evidence presented by Pinewood. Further, Pinewood should have had the opportunity to either re-depose the assessor specifically on her affidavit or cross examine her at a merits hearings. Allowing assessors to short circuit taxpayers' appeals to the MTT with their own affidavits is a dangerous precedent and bad policy that nullifies the appeal process without adequate adjudication of Michigan constitutional and statutory law regarding uniformity of taxation.

IV. CONCLUSION

The Chamber, AAM, and ICSC respectfully support the positions of Appellant Pinewood in this case because, at minimum, the MTT should have stood by its May 11, 2023 order denying summary disposition as to all parties and held an evidentiary hearing because there exist disputed questions of material fact, the resolution of which bear upon important uniformity and statutory legal principles of Michigan law.

RECEIVED by MCOA 2/6/2024 2:01:07 PM

Respectfully submitted,

Dated: February 6, 2024

/s/ Mark J. Magyar

Carl Rashid, Jr. (P23915)
DYKEMA GOSSETT PLLC
400 Renaissance Ctr, 36th Floor
Detroit, MI 48243-1502
crashid@dykema.com
(313) 568-5422

Mark J. Magyar (P75090)
DYKEMA GOSSETT PLLC
201 Townsend St., Suite 900
Lansing, MI 48933
mmagyar@dykema.com
(616) 776-7523

Attorneys for Amici Curiae

RECEIVED by MCOA 2/6/2024 2:01:07 PM

CERTIFICATE OF COMPLIANCE

I certify that the **Joint Brief Of Amici Curiae** complies with the type-volume limitation set forth in MCR 7.212(B). This brief uses a 12-point proportional font, has double-spaced text, and the word count is 4,182 based on the word count of the word-processing system used to produce this document.

Respectfully submitted,

Dated: February 6, 2024

/s/ Mark J. Magyar

Carl Rashid, Jr. (P23915)
DYKEMA GOSSETT PLLC
400 Renaissance Ctr, 36th Floor
Detroit, MI 48243-1502
crashid@dykema.com
(313) 568-5422

Mark J. Magyar (P75090)
DYKEMA GOSSETT PLLC
201 Townsend St., Suite 900
Lansing, MI 48933
mmagyar@dykema.com
(616) 776-7523

Attorneys for Amici Curiae

RECEIVED by MCOA 2/6/2024 2:01:07 PM

STATE OF MICHIGAN
MI Court of Appeals

Proof of Service

Case Title:	**Case Number:**
PINEWOOD CIRCLE LLC V CITY OF ROMULUS	367182

1. Title(s) of the document(s) served:

Filing Type	Document Title
Brief	Pinewood v Romulus, 2.6.24, Joint Brief of Amici Curiae
Appendix	Pinewood, Amici Appendix

2. On 02-06-2024, I served the document(s) described above on:

Recipient	Address	Type
Mark Magyar Dykema Gossett PLLC 75090	mmagyar@dykema.com	e-Serve
Lisa Joseph HMSC	LJoseph@Honigman.com	e-Serve
Stewart Mandell Honigman LLP P33781	slmandell@honigman.com	e-Serve
Seth O'Loughlin Hallahan & Associates, P.C. P80257	soloughlin@hallahanlaw.com	e-Serve
Leanna Simon Honigman	lsimon@honigman.com	e-Serve
Laura Hallahan Hallahan & Associates, P.C. P42101	lhallahan@hallahanlaw.com	e-Serve
Brooke Duley Hallahan & Associates , P.C.	assistant@hallahanlaw.com	e-Serve
Carl Rashid, Jr. Dykema 23915	crashid@dykema.com	e-Serve
Docket Litigation Honigman LLP	litdocket@honigman.com	e-Serve
Daniel Stanley Honigman LLP P57052	dstanley@honigman.com	e-Serve

This proof of service was automatically created, submitted and signed on my behalf through my agreements with MiFILE and its contents are true to the best of my information, knowledge, and belief.

RECEIVED by MCOA 2/6/2024 2:01:07 PM

02-06-2024

Date

/s/ Mark Magyar

Signature

Dykema Gossett PLLC

RECEIVED by MCOA 2/6/2024 2:01:07 PM