STATE OF MICHIGAN
IN THE COURT OF APPEALS
(ON APPEAL FROM THE MICHIGAN TAX TRIBUNAL)

BARAGA COUNTY EQUALIZATION DEPARTMENT, and
MICHIGAN STATE TAX COMMISSION,

Petitioners-Appellees,

-vs-

COURT OF APPEALS NO. 197195 C
MTT DOCKET NOS: 210750 & 213496

RICHARD & NANCY DELENE,

Respondents-Appellants.

_____/

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BRIEF AMICUS CURIAE

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STATEMENT OF QUESTIONS PRESENTED

CAN STATE WETLANDS REGULATION RESULT IN THE UNCONSTITUTIONAL TAKING, TEMPORARY OR PERMANENT, OF PROPERTY?

Respondents-Appellants answer: YES

Petitioners-Appellees did not address this question.

Tribunal Judge did not address this question is his opinion and judgment.

Amicus curiae answers: YES

WHEN PROPERTY IS TAKEN, PERMANENTLY OR TEMPORARILY, BY STATE WETLANDS REGULATION AND SUBSEQUENT STATE-INITIATED LITIGATION, IS A TOWNSHIP BOARD REQUIRED TO RECOGNIZE THAT TAKING IN DETERMINING THE ASSESSMENT OF THE PROPERTY FOR PURPOSES OF THE AD VALOREM TAX ON REAL PROPERTY?

Respondents-Appellants answer: YES

Petitioners-Appellees did not address this question.

Tribunal Judge did not address this question in his opinion and judgment.

Amicus curiae answers: YES

HAS STATE WETLANDS REGULATION AND SUBSEQUENT STATE-INITIATED LITIGATION RESULTED IN THE TAKING, TEMPORARY OR PERMANENT, OF RESPONDENTS-APPELLANTS' PROPERTY?

Respondents-Appellants answer: YES

Petitioners-Appellees answer: NO

Tribunal Judge answers: NO

Amicus curiae answers: YES

DID THE BARAGA TOWNSHIP BOARD OF REVIEW ACT PROPERLY IN ASSESSING THE RESPONDENTS-APPELLANTS' PROPERTY AT ZERO MARKET VALUE AS A RESULT OF THE TEMPORARY OR PERMANENT REGULATORY TAKING?

Respondents-Appellants answer: YES

Petitioners-Appellees answer: NO

Tribunal Judge answers: NO

Amicus curiae answers: YES

WHEN A TOWNSHIP BOARD OF REVIEW HAS ACTED PROPERLY IN DISCHARGING ITS OBLIGATION TO DETERMINE THE MARKET VALUE OF INDIVIDUAL PARCELS OF PROPERTY SUBJECT TO THE AD VALOREM TAX ON REAL PROPERTY, DO A COUNTY EQUALIZATION DEPARTMENT AND THE MICHIGAN STATE TAX COMMISSION HAVE STANDING TO PETITION THE MICHIGAN TAX TRIBUNAL CHALLENGING THE BOARD OF REVIEW'S ASSESSMENT OF ONLY ONE OWNER'S PROPERTY?

Respondents-Appellants answer: NO

Petitioners-Appellees answer: YES

Tribunal Judge did not address this question in his Opinion and Judgment.

Amicus curiae answers: NO

MAY COUNSEL TO THE MICHIGAN STATE TAX COMMISSION ENGAGE IN EX PARTE COMMUNICATION WITH THE TRIBUNAL JUDGE?

Respondents-Appellants answer: NO

Petitioners-Appellees answer: YES

Tribunal Judge, in receiving and acting upon the communication, answered: YES

Amicus Curiae answers: NO

STATEMENT OF FACTS

This brief amicus curiae accepts and adopts the Statement of Facts set forth in the Respondents-Appellants' brief on appeal. For purposes of the following argument, these facts can be summarized as follows:

1. With the intention of undertaking a private, noncommercial wetlands and wildlife habitat improvement project, Respondent-Appellants Richard and Nancy Delene acquired over a period of more than a decade a number contiguous parcels of land, now totaling approximately 2,400 acres. Much of this land was of marginal value for forestry or other uses because of the prevalence of muskeg bogs, other climax-stage wetlands and scrub forest. The approximately 1,400 acres at issue before the Michigan Tax Tribunal and in this appeal provide the site of the improvement project and are defined by the reach of a preliminary injunction obtained by the State in 1992 and filed as a restriction to title in the Baraga County Register of Deeds.

2. The property at issue was patented by the United States to the State of Michigan under the Swamp Lands Act of 1850. The Michigan Legislature authorized its transfer to private ownership by Acts 31 P.A. 1858 and 106 P.A. 1857, mandating that the private purchasers discharge the State's obligation under the federal Swamp Lands Act to drain swamp and overflowed lands, build levees and make them fit for cultivation. Act 106 P.A. 1857 further provided for prosecution of the private purchasers for damages in the event of their noncompliance with the reclamation mandate. Congress has never repealed the Swamp Lands Act of 1850, and the Michigan Legislature has never repealed Act 31 P.A. 1858 or Act 106 P.A. 1857.

3. In May 1990 Respondents-Appellants applied to the Michigan Department of Natural Resources for permits to continue the wetland- and wildlife-habitat improvement project, initiated under permits issued in 1982 by the U.S. Army Corps of Engineers. When the MDNR failed to act on the application, Respondents-Appellants were informed by their attorney that, under the Goemaere-Anderson Wetland Protection Act (1979 P.A. 203; MCL 281.951 et seq.; MSA 14.475(1) et seq.), action not having been taken with 90 days, the permits had been awarded by act of law, and Respondents-Appellants continued work on the project.

4. In April 1992 the MDNR issued a cease and desist order. In November 1992 suit was filed by Michigan Attorney General Frank Kelley (attorney for Petitioner-Appellee Michigan State Tax Commission in the instant action) and Michigan Department of Natural Resources then-director Roland Harmes, Jr., Plaintiffs, against Respondents-Appellants Richard and Nancy Delene, Defendants,[1.] alleging violation of the Goemaere-Anderson Wetland Protection and related Acts, and a preliminary injunction was issued and recorded with the Baraga County Register of Deeds, prohibiting further work on the project without express approval of MDNR.

[1.] Frank J. Kelley and Roland Harmes, Jr. v. Richard and Nancy Delene and Richard Delene Contracting, Inc., Circuit Court for the 30th Judicial Circuit, Ingham County, File No. 92-73245-AZ (James R. Giddings, Judge).

5. From the outset of this litigation and, specifically, in final oral arguments in November 1995 and in final briefs in December 1995, the Attorney General and MDNR have demanded complete "restoration" of the property to its condition prior to the initiation of Respondents-Appellants' wetland- and wildlife-habitat improvement project, including destruction of portions developed under the 1982 permits granted by U.S. Army Corps of Engineers permits. The State has estimated that the cost of restoration will exceed $700,000.00, an amount more than twice the true cash value asserted by the Petitioners-Appellees, and has demanded that the requirement of restoration run with the land as an encumbrance on any subsequent owner. Because even the Petitioners-Appellees place a value on the property substantially less than one-half of the cost of restoration, the market value of the land will become significantly negative should the Court order complete restoration. To date the Court has not issued its opinion and final order in this matter.

6. In consideration of the April 1992 cease-and-desist order and the November 1992 preliminary injunction, the Baraga Township Board of Review determined that the subject property, defined by the reach of the April 1992 cease-and-desist order and the November 1992 preliminary injunction, had a true cash (market) value of zero for tax year 1994 and pending the conclusion of the litigation: Respondents-Appellants were prohibited to continue the wetland and habitat improvement project which alone gave the property value to them, while, with the recording of the preliminary injunction, any prospective purchaser was placed on notice of the potential liability associated with the property, depriving it of marketability and, hence, of market value.

7. The Michigan State Tax Commission encouraged the Baraga County Equalization Director to initiate an appeal of the Baraga Township Board of Review's assessment to the Michigan Tax Tribunal and, represented by the Attorney General, joined in that appeal (MTT Docket No. 210750). In response, Respondents-Appellants appealed the Board of Review's assessment of their homestead surrounded by the property at issue in the Baraga County Equalization Director's petition, (MTT Docket No. 213496), in which the Attorney General, on behalf of the Michigan State Tax Commission, also intervened.

8. Respondents-Appellants, on May 16, 1995, in MTT Docket No. 210750, filed a Motion for Dismissal of Appeal and for the Imposition of Costs, on grounds that Pauline E. Cayanus, Director of the Baraga County Equalization Department, had no authority or standing to appeal a single assessment of the local Township Board of Review, citing as authority **Jackson County Board of Commissioners v. Hanover Township, MTT Docket Nos. 84496 and 87841, 3 MTT 383 (November 27-28, 1984)**.

9. A hearing of the Small Claims Division of the Michigan Tax Tribunal was held on November 13, 1995, Tribunal Judge Norman D. Shinkle presiding. At that hearing Respondent-Appellants, unable to appear in person and financially unable to provide for representation by an attorney, were represented by lay representatives. Orally and in a written Memorandum Respondents-Appellants representatives again challenged the standing and authority of Pauline E. Cayanus, as director of the Baraga County Equalization Department, to appeal to the Michigan Tax Tribunal the assessment of a single parcel of property.

10. At this hearing the basis for the assessment by the Baraga Township Board of Review was not addressed by the Petitioners, Baraga County Equalization Department and Michigan State Tax Commission, which relied for their estimates of true cash value on recent sales of property otherwise comparable to that of Respondents **but unencumbered by cease-and-desist orders, preliminary injunctions and continuing litigation (including restoration orders which have been pending since this litigation was initiated)**.

11. Failing to act on the Respondents-Appellants' motions for dismissal and imposition of costs, as stated prior to and again at the hearing, in Opinion and Judgment, MTT Docket Nos. 210750 and 213496, March 20, 1996, as amended by Errata, April 19, 1996, the Tribunal Judge rejected that motion de facto, and proceeded to place 1994 true cash and assessed values on the properties equal to those asserted by the Baraga County Equalization Department and the Michigan State Tax Commission (MTT Docket No. 210750) and by the Baraga Township Board of Review (MTT Docket No. 213496).

12. In his Opinion and Judgment the Tribunal Judge revealed that, subsequent to the hearing, he had received a letter from "Petitioners" (Baraga County Equalization Department and/or Michigan State Tax Commission and/or Attorney General Frank Kelley), a copy of which was not provided to Respondents-Appellants, and Respondents-Appellants had no opportunity to respond to any allegations, arguments or motions contained in this letter. That this letter was not provided to Respondents-Appellants is of particular significance in light of statements included in the Tribunal Judge's Opinion and Judgment that do not represent and are not based upon evidence presented in briefs or oral testimony at the Tribunal hearing, several of which are decidedly prejudicial to Respondent-Appellants.

ARGUMENT

STATE WETLANDS REGULATION CAN RESULT IN THE UNCONSTITUTIONAL TAKING, TEMPORARY OR PERMANENT, OF PROPERTY.

The Fifth Amendment to the United States Constitution states: "nor shall private property be taken for public use, without just compensation." Similarly, the Michigan Constitution states: "Private property shall not be taken for public use without just compensation therefor being first made or secured in a manner prescribed by law." Const 1963, art 10, § 2. The Takings Clause of the Fifth Amendment has been made applicable to the states through the Fourteenth Amendment. Dolan v City of Tigard, 512 U.S. ; 114 S. Ct. 2309; 129 Ii. Ed. 2d 304, 315 (1994); Peterman v Dep't of Natural Resources, 446 Mich 177, 184 n 10; 521 N.W.2d 499 (1994).

Citing the United States Supreme Court in Lucas v South Carolina Coastal Council, 505 U.S. 1003; 112 S. Ct. 2886; 120 L. Ed. 2d 798, 813 (1992)**,** the Michigan Court of Appeals, in K & K Construction, Inc., et al. v Department of Natural Resources**,** 217 Mich. App. 56; 551 NW 2d 413 (1996), has held that the Fifth Amendment is violated when state regulation denies an owner economically viable use of the owner's land. In K & K the Court of Appeals noted:

> ... In Lucas, the [supreme] court held that, where the state seeks [*7] to sustain regulation that deprives property of all economically beneficial use, the state may resist compensation only if an inquiry into the nature of the owner's property shows that the proscribed use interests were not part of the title to begin with. Id., p 820. Thus, a regulation that prohibits all economically beneficial use of land cannot be newly legislated or decreed without compensation, but must inhere in the title itself, with the restriction that background principles of state property or nuisance law may already place on land ownership. Id., p 821.

Further, in K & K, which specifically involved state regulation under the Wetlands Protection Act, the Court of Appeals found that

> ... the generalized invocation of public interests in the state Constitution, and the legislature as declarations in the WPA and the Michigan Environmental Protection Act, MCL 691.1201 et seq.; MSA 14.528(201) et seq., do not constitute background principles of nuisance and property law sufficient to prohibit the use of plaintiffs' land without just compensation.

The K & K court did not deny that the state may have a legitimate interest in private activities affecting wetlands. However, it held that the state’s authority to act in that interest does not inhere in the title to the land or in “background principles of

nuisance and property law" and thus does not exempt the state from the constitutional requirement of compensation under the takings clauses of the federal and state constitutions.

If, in general, "background principles of nuisance and property law" are not "sufficient to prohibit the use of ... land without just compensation," this is especially the case when the property rights, the exercise of which is opposed by the state, inhere in the title as granted by the United States. Thus, in Summa Corp. v. California ex rel. Lands Commission, 466 U.S. 198 (1984), the United States Supreme Court held that, even when the state interest involved the state's sovereign right of servitude over tide lands, that sovereign servitude did not survive or supersede the rights of the private property owner recognized in a federal patent.

Although the federal patent at issue in Summa was granted pursuant to the 1848 Treaty of Guadalupe Hidalgo, 9 Stat. 922, a corresponding logic applies to the patents issued first to the state of Michigan and through it to private parties under the terms of the Swamp Lands Act of 1850. Just as the state of California failed to object to the federal patents issued to Summa's predecessor in interest, the state of Michigan accepted the patents issued under the Swamp Lands Act, and it cannot now act to negate or revoke the rights and obligations established by those patents without providing just compensation for the property thus taken.

WHEN PROPERTY IS TAKEN, PERMANENTLY OR TEMPORARILY, BY STATE WETLANDS REGULATION AND SUBSEQUENT STATE-INITIATED LITIGATION, A TOWNSHIP BOARD IS REQUIRED TO RECOGNIZE THAT TAKING IN DETERMINING THE ASSESSMENT OF THE PROPERTY FOR PURPOSES OF THE AD VALOREM TAX ON REAL PROPERTY.

Pursuant to the General Property Tax Act, MCL211.150, the fundamental obligation of a township board of review is to assure that all properties are "placed upon the assessment rolls and assessed at that proportion of true cash value which the legislature from time to time shall provide."

When a property is "taken," within the constitutional meaning of that term, whether with or without compensation, that property, to the extent of the taking, can have no value to the nominal owner.

Under the principle established in Lucas, compensation is constitutionally required only when the property is physically taken or deprived of all economically viable use. In K & K the Michigan Court of Appeals recognized that such a taking could be permanent or temporary.

Clearly, if a property is temporarily taken, for the period of the taking the property has no marketable value and cannot be subject to the ad valorem tax on real property. If the property is permanently taken, then it must be permanently exempted from ad valorem taxation. To accomplish this exemption, a township board of review must place the property on the assessment roles at a value of zero, as dictated by its market value subsequent to the taking. To hold otherwise would imply either that the property had not

been taken or that the property must be assessed at a rate other than "that proportion of true cash value which the legislature from time to time shall provide ..."

In the instant case it will be argued that the entirety of the Respondents-Appellants' property at issue here has been taken, at least for the duration of the current litigation. However, even if taking did not deprive the property of all economically viable uses and thus did not require compensation under the Lucas principles, it would still be incumbent on a township board of review to recognize the partial taking in determining the true cash (market) value and assessed value of the property. In short, a taking need not reach the threshold established by Lucas as entitling the owner to compensation in order to be recognized for purposes of the ad valorem tax on real property.

In conclusion, in order to discharge its obligation to assess properties at the legislatively mandated proportion of true cash value, a board of review must take into account the extent of any temporary or permanent taking resulting from regulatory actions of the state.

STATE WETLANDS REGULATION AND SUBSEQUENT STATE-INITIATED LITIGATION RESULTED IN THE TAKING, AT LEAST TEMPORARY, OF RESPONDENTS-APPELLANTS' PROPERTY.

Because the Baraga Township Board of Review placed the Respondents-Appellants' property on the ad valorem tax rolls at an assessed value of zero only until the conclusion of the current state-initiated litigation, it is unnecessary to determine if the property has been or will be determined to have been permanently taken by the state through its wetlands regulation. That issue will appropriately be decided by the 30th Circuit Court and/or by subsequent courts of appeal.

However, for the duration of that litigation it is clear that Respondents-Appellants property has been "taken" within the constitutional meaning of that term.

1. Although the Respondents-Appellants own approximately 2,400 acres in contiguous parcels, only those parcels subject to the April 1992 cease-and-desist order of the Michigan Department of Natural Resources and to the November 1992 preliminary injunction of the 30th Circuit Court were considered by the Baraga Township Board of Review to have been at least temporarily taken and, thus, assessed at zero value.

2. The subject parcels were acquired by the Respondents-Appellants only for purposes of their wetland-habitat development project and, even apart from cease-and-desist orders and preliminary injunction, have no value to Respondents-Appellants and little value to others for purposes other than wetland habitat and its development. Specifically, because of the highly acidic climax-stage wetlands' nature of the property it is of little value for forestry or agriculture, and its location (several miles from the nearest all-season road) gives it no value for residential or commercial development.

3. Even if the property had value apart from the Respondents-Appellants' wetlands-habitat development project, the recording of the preliminary injunction deprives

it of that value for the duration of the state-initiated litigation. Until Respondents-Appellants' title to the land is cleared by the lifting of the injunction, any party purchasing the property would be accepting a potential liability estimated by the state to be twice the state's own estimate of the unencumbered value of the property. Under these circumstances the property is, effectively, unmarketable and hence without market value.

4. As a result of the cease-and-desist order, the preliminary injunction, court-ordered access to the property by agents of the state and recurrent aerial surveillance of the property, the Respondents-Appellants have been denied quiet enjoyment of their homestead (at issue in MTT Docket No. 213496), depriving the homestead of value for the duration of the litigation.

In short, it can only be concluded that the Respondents-Appellants' property at issue in the state wetlands regulation and related litigation and their homestead (surrounded by the property at issue in the regulation and litigation) have been effectively taken, i.e., the Respondents-Appellants have been deprived of any use-value in the property and the property itself has been deprived of market value, at least for the duration of the current litigation.

THE BARAGA TOWNSHIP BOARD OF REVIEW ACTED PROPERLY IN ASSESSING THE RESPONDENTS-APPELLANTS' PROPERTY AT ZERO MARKET VALUE AS A RESULT OF THE TEMPORARY OR PERMANENT REGULATORY TAKING.

Clearly, if a board of review is obligated to take into consideration temporary or permanent regulatory takings in discharging its responsibilities under the General Property Tax Act, and if the Respondents-Appellants' property has been taken, at least temporarily, by state regulation and state-initiated litigation, then the Baraga Township Board of Review Acted properly in determining that, for the duration of the current litigation, the subject property would be placed on the tax rolls at an assessed value of zero, in conformance with its current lack of marketability.

In essence, the Baraga Township Board of Review anticipated the findings of the Court of Appeals in State of Michigan v. Bayshore Associates, Inc., 210 Mich. App. 71, 533 NW 2d 593 (1995), and in K & K Construction, Inc., et al. v. Department of Natural Resources, 1996 Mich. App. (June 4, 1996). In Bayshore the court characterized the conduct of the DNR as "that of a rogue agency wielding its extensive power to punish and harass a landowner for daring to insist on and asserting its constitutional and statutory rights" and ordered the award of permits and payment of compensation. In K & K, as discussed above, the Court held that denial of a wetlands permit constituted a "taking" in violation of the Fifth Amendment of the Constitution of the United States and of Article 10, Section 2 of the Constitution of the State of Michigan of 1963. The logic of the Board of Review precisely parallels the logic of the Michigan Court of Appeals in these cases.

With reference to the market value of the property, the Baraga Township Board of Review has simply recognized "that market value is fixed not by what actually exists but

by what the buying public *perceives* as tainted land."[2] Here, the "taint" is not environmental contamination but the State's allegation of contamination, compromise of title and power to order remediation, at costs which will be imposed on the immediate defendants (here the Respondents-Appellants) and on any successor in title.

WHEN A TOWNSHIP BOARD OF REVIEW HAS ACTED PROPERLY IN DISCHARGING ITS OBLIGATION TO DETERMINE THE MARKET VALUE OF AN INDIVIDUAL PARCEL OF PROPERTY SUBJECT TO THE AD VALOREM TAX ON REAL PROPERTY, A COUNTY EQUALIZATION DEPARTMENT AND THE MICHIGAN STATE TAX COMMISSION HAVE NO STANDING TO PETITION THE MICHIGAN TAX TRIBUNAL CHALLENGING THE BOARD OF REVIEW'S ASSESSMENT OF ONLY ONE OWNER'S PROPERTY.

Prior to and at the hearing of the Michigan Tax Tribunal Respondents-Appellants moved for dismissal of the petition of the Baraga County Equalization Department and of the Michigan State Tax Commission on grounds that a county equalization department (and, by extension, the State Tax Commission) does not have standing to challenge a board of review's assessment of a single property. As argued by Respondents-Appellants' brief on appeal, Jackson County Board of Commissioners v. Hanover Township, MTT Docket Nos. 84496 and 87841, 3 MTT 383 (November 27-28, 1984) clearly establishes that a county has standing and authority to challenge a township board of review's assessments of individual properties within a class only when across-the-board assessment actions of the Township Board of Review have the effect of negating the effective imposition of an equalization factor determined by the County.

One can only speculate concerning the reasons for the refusal of the Michigan Tax Tribunal to rule on the Respondents-Appellants' motion for dismissal and imposition of costs.

Similarly, one can only speculate concerning the reasons for the Michigan State Tax Commission's encouragement of the petition by the Baraga County Equalization Department, challenging the findings of the Baraga Township Board of Review, and subsequent motion to intervene on behalf of the County Equalization Department.

However, in this latter regard the fact that the Michigan Attorney General is both attorney for the Michigan State Tax Commission and also the plaintiff (and plaintiffs' attorney) in the 30th Circuit Court action against the Respondents-Appellants offers a possible explanation.

In State of Michigan v. Bayshore Associates, Inc., 1995 Mich. App. (April 21, 1995), the Michigan Court of Appeals characterized the conduct of the DNR as "that of a rogue agency wielding its extensive power to punish and harass a landowner for daring to insist on and asserting its constitutional and statutory rights" and upheld the trial court's

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[2] Donnelly Hadden, "One of the Hidden Consequences of Environmental Contamination Is Erosion of the Tax Base," **Environmental Concerns and the Community Banker**, February 1993, p. 97.

order that the DNR award permits and reimburse the defendant's costs and attorneys' fees. Noting numerous abuses by the DNR's attorney, the trial court "stated that overall it was dissatisfied [footnote: "Though angry and frustrated may be a more appropriate characterization."] with DNR's counsel's handling of the case, which proved oppressive to Bayshore"; notably, the Attorney General served as attorney to the DNR in Bayshore.

Here, again, we see evidence of serious abuse by Petitioner's counsel, the Attorney General, especially as revealed by the existence of ex parte communication with the Tribunal Judge, as discussed further below, and can only suspect that counsel was responsible, through the Michigan State Tax Commission, for the initiation of this action by the Baraga County Equalization Department, encouraged by counsel because it served to further "punish and harass" Respondents-Appellants for their refusal to submit to the demands of the DNR and that counsel (the Attorney General) in the matter now before the 30th Circuit Court.

EX PARTE COMMUNICATION BY COUNSEL TO THE MICHIGAN STATE TAX COMMISSION WITH THE TRIBUNAL JUDGE VIOLATED COURT RULES, RULES OF PROFESSIONAL CONDUCT AND CLEARLY ENUNCIATED JUDICIAL OPINIONS.

That "Petitioners" communicated ex parte with the Tribunal Judge was revealed by the latter in his opinion and judgment. It can only be assumed that this letter was filed by counsel to the Michigan State Tax Commission (the Attorney General).

This ex parte communication is a clear violation of MCR 2.107, which requires service of all papers filed by a party on all other parties, of MRPC 3.5(b), which prohibits ex parte communication with a judge concerning a pending matter, and of the judicial standard set by People v Conte, 104 Mich. App. 73.

In light of statements in the opinion and judgment of the Tribunal Judge which were not derived from testimony, briefs or other material properly presented to the Tribunal and which are decidedly prejudicial to the Respondents-Appellants, the justification for the courts' strong condemnation of ex parte communication is graphically indicated.

Thus, as in Bayshore, we again see a continuing pattern of abuse by counsel to Petitioners-Appellees which can only charitably be characterized as "oppressive" to the Respondents-Appellants.

RELIEF RECOMMENDED

This Amicus Curiae supports Respondents-Appellants request that this Court reverse the Opinion and Judgment of the Michigan Tax Tribunal and (a), with reference to MTT Docket No. 210750**,** reinstate the 1994 assessment determined by the Baraga Township Board of Review**,** and (b), with reference to MTT Docket No. 213496, grant Respondents-Appellants' petition for the assessment of the subject property at zero, such assessments to remain in force until the conclusion of the wetlands action against Respondent-Appellants currently in progress in the 30th Circuit Court.

It is further recommended that this court tax Petitioners-Appellees for the costs and attorneys' fees incurred by Respondents-Appellants in pursuing this appeal.

Respectfully submitted,

Dated: February 25, 1997

Stephen P. Dresch, Amicus Curiae, In propria persona

CERTIFICATE OF SERVICE

I certify that on February __25_, 1997, I mailed or delivered a true copy of the foregoing to counsel of record.

Stephen P. Dresch