



Christopher Investment Company, d/b/a Christopher Commercial, Inc.

4301 W. William Cannon Drive, Suite E150, Austin, Texas 78749

P.O. Box 92709, Austin, Texas 78709-2709

Telephone (512) 263-1333

Facsimile (512) 263-1423

www.christopherinv.com

RECEIVED IN
3rd COURT OF APPEALS
AUSTIN, TEXAS

4/5/2022 4:53:09 PM

JEFFREY D. KYLE
Clerk

April 5, 2022

Mr. Jeffrey D. Kyle, Clerk of the Court
Third Court of Appeals
PO Box 12547
Austin, Texas 78711

RE: Motion for Rehearing
No. 03-20-00122-CV; *Crigler v. Texas Disposal Systems Landfill, Inc.*

To the Honorable Court:

Pursuant to Texas Rules of Appellate Procedure Rule 11, Christopher Investment Company (CIC) is writing to express support for Texas Disposal Systems Landfill, Inc.'s motion for re-hearing in the above referenced appeal.

CIC is a commercial real estate company headquartered in Austin, Texas. CIC owns and operates multi-family properties in the Austin area providing Austinites with comfort, convenience and a place they are proud to call home.

As the managing entity for Catherine Tower, LLC, CIC has firsthand knowledge from its own litigation of the punishing and deterring tactics appraisal districts can employ when a property owner invokes the remedy of unequal appraisal by attempting to inject a market value determination into an unequal appraisal claim. *In re Catherine Tower*, 553 S.W.3d 679, 685-688 (Tex. App.—Austin 2018, orig. proceeding). This Court rightly rejected TCAD's previous attempts to merge the separate and distinct claims in 2018, and CIC urges the Court to do the same here for three main reasons:

I.

The decision dramatically departs from more than twenty years of Texas jurisprudence recognizing that a market value claim is separate and distinct from an equal and uniform claim under the Texas Property Tax Code. The Court, by holding that TCAD can bring a market value challenge to determine the equal and

uniform value, merged the two separate claims into one and effectively eliminated the right to equal and uniform appraisals for taxation purposes.

Until now, Texas case law has been consistent in holding that an independent appraisal of market value is not part of an equal and uniform challenge brought under Section 42.26(a)(3) of the Texas Property Tax Code and that establishing the property's market value cannot defeat a claim of unequal appraisal. *Harris County Appraisal District v. United Investors Realty Trust*, 47 S.W.3d 648, 650, 655 (Tex. App.—Houston [14th Dist.] 2001, pet. denied) (holding trial court properly ignored the property's market value and considered only whether the property was unequally appraised with comparable properties appropriately adjusted).

The Court's decision conflicts with Texas courts' longstanding distinction between excessive market value claims (Section 42.25) and unequal appraisal claims (Section 42.26), and conflates the two separate and distinct claims into one. *See id.* at 654-655 (recognizing that independent appraisal of market value is not required in an equal and uniform challenge and the proper application of section 42.26(a)(3) does not include consideration of market value); *see also In re Catherine Tower*, 553 S.W.3d at 685-687 (recognizing claims as distinct and that a determination of unequal appraisal does not hinge upon whether the subject property's appraisal is consonant with its market value); *In re APTWT, LLC*, 612 S.W.3d 85 (Tex. App.—Houston [14th Dist.] 2021, orig. proceeding) (same).

If the Court's decision remains, the right of CIC and all Texas property owners to equal and uniform appraisals is jeopardized because appraisal districts are now permitted to inject a determination of the property's market value into a taxpayer's equal and uniform claim.

II.

The decision conflicts with the plain wording of Section 42.02 of the Texas Property Tax Code and as a result expands the chief appraiser's right of appeal well beyond the plain and limiting language the Legislature utilized. By the plain language of Section 42.02, the Legislature limited an appraisal district's right to appeal to an order of the ARB determining a taxpayer protest. It is undisputed that the ARB did not determine a taxpayer protest of excessive market value in this case and never issued an order determining a taxpayer protest on market value.

This expansion of the chief appraiser’s right to sue property owners in district court goes well beyond what the Legislature intended is alarming and places property owners in peril of being sued by the government on grounds never protested and never determined by the ARB. As a result, the Court’s opinion will likely have a chilling effect on property owners’ pursuit of their various rights to protest made available in Section 41.41(a) of the Tax Code.

III.

The decision misconstrues the trial de novo standard of review into a vehicle that expands or somehow creates jurisdiction. The standard of review does nothing more than establish the type of review the district court should conduct of the ARB order. The nature of the review in no way expands what is being reviewed, or in other words, does not expand the trial court’s jurisdiction. The terms of Section 42.02 control a chief appraiser’s right to appeal an ARB determination and the district court’s jurisdiction.

For these reasons, Christopher Investment Company requests the Court grant the motion for rehearing.

In compliance with Rule 11, I state that no fee was paid or is to be paid for preparing this amicus letter.

Respectfully submitted,

/s/ Daniel P. Myrick

Daniel P. Myrick
State Bar No. 24056603
Chief Operating Officer &
General Counsel
Christopher Investment Company
d/b/a Christopher Commercial

CIC Amicus Letter
Motion for Rehearing – Third Court of Appeals
No. 03-20-0012-CV
Crigler v. Texas Disposal Systems Landfill, Inc.
April 5, 2022
Page 4 of 4

Certificate of Service

I certify that on April 5, 2022, a copy of the foregoing amicus letter by Christopher Investment Company was served on all parties.

/s/ Daniel P. Myrick
Daniel P. Myrick
State Bar No. 24056603

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Ginger Grimm on behalf of Melanie Plowman
Bar No. 24002777
ggrimm@adjtlaw.com
Envelope ID: 63293012
Status as of 4/6/2022 7:57 AM CST

Associated Case Party: Texas Public Policy Foundation

Name	BarNumber	Email	TimestampSubmitted	Status
Yvonne Simental		ysimental@texaspolicy.com	4/5/2022 4:53:09 PM	SENT
Robert Henneke		rhenneke@texaspolicy.com	4/5/2022 4:53:09 PM	SENT
Munera Al-Fuhaid		mal-fuhaid@texaspolicy.com	4/5/2022 4:53:09 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Mark Trachtenberg		mark.trachtenberg@haynesboone.com	4/5/2022 4:53:09 PM	SENT
Michelle Meuhlen		michelle.meuhlen@haynesboone.com	4/5/2022 4:53:09 PM	SENT
Wallace Jefferson	19	wjefferson@adjtlaw.com	4/5/2022 4:53:09 PM	SENT
Karen Kocks Evertson	797745	Karen@texaslaw.com	4/5/2022 4:53:09 PM	SENT
Mary Sanchez	17570830	mary@texESlaw.com	4/5/2022 4:53:09 PM	SENT
Melanie Plowman	24002777	mplowman@adjtlaw.com	4/5/2022 4:53:09 PM	SENT
Lorri Michel	14009460	lorri@michelgray.com	4/5/2022 4:53:09 PM	SENT
Shane Rogers	24037384	shane@michelgray.com	4/5/2022 4:53:09 PM	SENT
Ryan Pitts		ryan.pitts@haynesboone.com	4/5/2022 4:53:09 PM	SENT
ES Paralegal		paralegal@texaslaw.com	4/5/2022 4:53:09 PM	SENT
TCAD Litigation		litigation@tcadcentral.org	4/5/2022 4:53:09 PM	SENT
Kimberley Baldrige		Kim@michelgray.com	4/5/2022 4:53:09 PM	SENT
Cathi Trullender		ctrullender@adjtlaw.com	4/5/2022 4:53:09 PM	SENT

OMNI HOTELS & RESORTS

April 5, 2022

Mr. Jeffrey D. Kyle, Clerk of the Court
Court of Appeals for the Third District at Austin
P.O. Box 12547
Austin, Texas 78711

RE: No. 03-20-00122-CV
Crigler v. Texas Disposal Systems Landfill, Inc.

To the Honorable Court:

RECEIVED IN
3rd COURT OF APPEALS
AUSTIN, TEXAS

Omni Hotels & Resorts (“Omni”) is writing to express support for Texas Disposal Systems Landfill, Inc.’s motion for re-hearing in the above referenced appeal, pursuant to Texas Rule of Appellate Procedure Rule 11.

4/5/2022 5:41:08 PM
JEFFREY D. KYLE
Clerk

Omni is a privately held international hotel company based in Dallas, Texas. Omni owns and operates fifty properties in the United States, ten of which are located in Texas. With significant real estate holdings in Texas, Omni is particularly concerned with the Court’s opinion holding that jurisdiction existed over TCAD’s market value claim for two significant reasons: (1) the decision creates an alarming expansion of the government’s ability to sue Texas taxpayers; and (2) the decision conflates the equal and uniform claim with the market value claim undermining the requirement for equal and uniform taxation.

I. The opinion created an inexplicable and alarming expansion of the government’s right to sue Texas taxpayers.

County appraisal districts are political subdivisions of the state of Texas. TEX. PROP. TAX CODE, § 6.01(c). As a political subdivision of the state, appraisal districts have vast resources that can be invoked against Texas property owners. Understanding the virtually unlimited resources of the government, the Legislature intentionally provided a very limited statutory right for appraisal districts to sue taxpayers – only allowing appraisal districts to appeal determinations of the ARB. TEX. PROP. TAX CODE, § 42.02.

The plain wording of Section 42.02 limits an appraisal district’s right to sue taxpayers to only that of an appeal of an ARB order determining a taxpayer protest. It is troubling that in this case the ARB never determined a taxpayer protest of

excessive market value and never issued an order determining a taxpayer protest on market value from which an appeal could be taken under Section 42.02. Nevertheless, quite surprisingly, the Court found jurisdiction over the appraisal district's lawsuit to determine market value in direct conflict with the plain wording of Section 42.02.

Omni is concerned that this expansion of appraisal districts' right to sue property owners in district court will detrimentally affect the right of property owners to pursue their rights to protest the appraised values of their property on the equal and uniform ground made available in Section 41.41(a) of the Tax Code and protected by the Texas Constitution.

This expansion of the chief appraiser's right to sue property owners in district court goes well beyond what the Legislature intended is alarming and places property owners in peril of being sued by the government on grounds never protested and never determined by the ARB.

II. The opinion conflicts with established Texas law by conflating the market value claim with the equal and uniform claim and ultimately undermining the requirement for equal and uniform taxation in Texas.

Texas case law has been consistent in holding that establishing the property's market value cannot defeat a claim of unequal appraisal. *Harris County Appraisal District v. United Investors Realty Trust*, 47 S.W.3d 648, 650, 655 (Tex. App.—Houston [14th Dist.] 2001, pet. denied) (holding that trial court properly ignored the property's market value and considered only whether the property was unequally appraised with comparable properties appropriately adjusted and that an independent appraisal of market value is not part of an equal and uniform challenge brought under Section 42.26(a)(3) of the Texas Property Tax Code); *see also In re Catherine Tower*, 553 S.W.3d 679, 685-687 (Tex. App.—Austin 2018, orig. proceeding) (recognizing two types of claims as distinct and that a determination of unequal appraisal does not hinge upon whether the subject property's appraisal is consonant with its market value); *In re APTWT, LLC*, 612 S.W.3d 85 (Tex. App.—Houston [14th Dist.] 2021, orig. proceeding) (same).

The constitutionally based requirement for equal and uniform taxation in Texas is a valued right for all Texas property owners. As such, Omni is concerned about the eroding effect the Court's opinion will have on that right if the opinion stands.

Conclusion

For the above-stated reasons, Omni Hotels & Resorts respectfully asks the Court to grant the motion for rehearing.

I state that no fee was paid or is to be paid for preparing this amicus letter, pursuant to Rule 11.

Respectfully submitted,



Paul A. Jorge

State Bar No. 24007462

General Counsel

TRT Holdings, Inc./Omni Hotels
& Resorts

Certificate of Service

I certify that on April 5, 2022, a copy of the foregoing amicus letter by Omni Hotels and Resorts was served on all parties.

A handwritten signature in blue ink, appearing to read "P. Jorge", is written over a horizontal line.

Paul A. Jorge
SBN 24007462

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Gina Verlander on behalf of Melanie Plowman
Bar No. 24002777
gverlander@adjtlaw.com
Envelope ID: 63295389
Status as of 4/6/2022 7:16 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Mark Trachtenberg		mark.trachtenberg@haynesboone.com	4/5/2022 5:41:08 PM	SENT
Michelle Meuhlen		michelle.meuhlen@haynesboone.com	4/5/2022 5:41:08 PM	SENT
Wallace Jefferson	19	wjefferson@adjtlaw.com	4/5/2022 5:41:08 PM	SENT
Karen Kocks Evertson	797745	Karen@texaslaw.com	4/5/2022 5:41:08 PM	SENT
Mary Sanchez	17570830	mary@texESlaw.com	4/5/2022 5:41:08 PM	SENT
Melanie Plowman	24002777	mplowman@adjtlaw.com	4/5/2022 5:41:08 PM	SENT
Lorri Michel	14009460	lorri@michelgray.com	4/5/2022 5:41:08 PM	SENT
Shane Rogers	24037384	shane@michelgray.com	4/5/2022 5:41:08 PM	SENT
Ryan Pitts		ryan.pitts@haynesboone.com	4/5/2022 5:41:08 PM	SENT
ES Paralegal		paralegal@texaslaw.com	4/5/2022 5:41:08 PM	SENT
TCAD Litigation		litigation@tcadcentral.org	4/5/2022 5:41:08 PM	SENT
Kimberley Baldrige		Kim@michelgray.com	4/5/2022 5:41:08 PM	SENT
Cathi Trullender		ctrullender@adjtlaw.com	4/5/2022 5:41:08 PM	SENT

Associated Case Party: Texas Public Policy Foundation

Name	BarNumber	Email	TimestampSubmitted	Status
Yvonne Simental		ysimental@texaspolicy.com	4/5/2022 5:41:08 PM	SENT
Munera Al-Fuhaid		mal-fuhaid@texaspolicy.com	4/5/2022 5:41:08 PM	SENT
Robert Henneke		rhenneke@texaspolicy.com	4/5/2022 5:41:08 PM	SENT



Texas Public Policy Foundation

RECEIVED IN
3rd COURT OF APPEALS
AUSTIN, TEXAS
4/5/2022 3:26:56 PM
JEFFREY D. KYLE
Clerk

April 5, 2022

Mr. Jeffrey D. Kyle, Clerk of the Court
Third Court of Appeals
P.O. Box 12547
Austin, TX 78711

RE: *Amicus Curiae Brief* in Support of Rehearing
No. 03-20-00122-CV; *Crigler v. Texas Disposal Systems Landfill, Inc.*

TO THE HONORABLE THIRD COURT OF APPEALS:

Pursuant to Texas Rule of Appellate Procedure 11, the Texas Public Policy Foundation (the “Foundation”) submits this *amicus curiae* letter brief in support of Texas Disposal Systems Landfill, Inc. (“TDSL”) motion for rehearing, and respectfully requests that the Court grant TDSL’s motion to protect the constitutional and statutory rights of Texas taxpayers in disputes with governmental appraising authorities.¹ The issues presented in this motion for rehearing—and the Travis Central Appraisal District’s (“TCAD’s”) use of the appeals process in particular— affect the legal rights of every property owner in Texas that chooses to contest the unequal appraisal of their home or business. Yet due to the heavy cost of litigating for any individual taxpayer, the issues presented have evaded a resolution that accounts for the burdens these taxpayers face.

The Texas Public Policy Foundation is a non-profit, non-partisan research organization dedicated to promoting liberty, personal responsibility, and free enterprise through academically sound research and outreach. Since its inception in 1989, the Foundation has emphasized the importance of limited government, free market competition, private property rights, and freedom from regulation. In accordance with its central mission, the Foundation has hosted policy discussions,

¹ The undersigned has conferred with parties’ attorneys regarding the filing of this *amicus* brief. The parties do not object to the filing of the Foundation’s *amicus* brief.

authored research, presented legislative testimony, and drafted model legislation to reduce the burden of government on Texans. The Foundation has not and will not pay a fee for the preparation of this *amicus* letter.

The pivotal issues presented in TDSL’s motion for rehearing are:

(1) Whether—as the government argues—an unequal-appraisal claim under Texas Tax Code § 42.26(a)(3) is merely “an assessment of [a property’s] market value,” or whether—as the taxpayer argues—a § 42.26(a)(3) claim is a distinct and independent statutorily prescribed tax-discrimination claim in which the property’s fair-market value is neither an element nor a defense.

(2) Whether—as the government argues—Texas Tax Code § 42.23(a) contemplates the “de novo” standard of review as allowing claims undetermined in the proceeding below to be adjudicated by the court to which the case is appealed, or whether—as the taxpayer argues—the court to which the case is appealed is limited to adjudicating de novo only the claims determined below.

With respect to the first issue, § 42.26(a)(3) facially provides that a taxpayer’s unequal-appraisal claim under this section is not a market-value claim as a matter of law. Instead, it is a statutory claim requiring that the taxpayer demonstrate only that the appraisal district’s “appraised value of the property exceeds the median [of appraisal district’s] appraised value of a reasonable number of comparable properties properly adjusted.” TEX. TAX CODE § 42.26(a)(3); *see Duke Realty Ltd. P’ship v. Harris Cnty. Appraisal Dist.*, No. 14-15-00543-CV, 2016 WL 25746666, at *3 (Tex. App.—Houston [14th Dist.] June 20, 2016, no pet.) (mem. op.) (citations omitted).

This Court in *In re Catherine Tower, LLC* expressly rejected “TCAD’s fallacious syllogism that an appraisal dispute under Section 42.26(a)(3) means that market value is at issue.” 553 S.W.2d 679, 688 (Tex. App.—Austin [3rd Dist.] 2018). In that case, this Court held that information regarding “market value” was not even relevant enough to be discoverable by TCAD in a § 42.26(a)(3) action.² It follows that if information regarding market value is not relevant enough to meet the liberal standards of discovery, the subject is certainly not closely linked enough to a § 42.26(a)(3) claim to be pulled out of it and brought into issue on appeal. Instead,

² This is to say, this Court did not find that information regarding market value (a) has any tendency to make any fact respecting the unequal appraisal claim more or less probable than it would be without the evidence, nor is it (b) of consequence in determining the unequal appraisal action. *In re Catherine Tower, LLC*, 553 S.W.2d at 682.

market value and unequal-appraisal claims are entirely separate and distinct. In reaching its conclusion, with pointed clarity, this Court repudiated TCAD's argument that "an assessment of a property's appraised value under Section 42.26(a)(3) is an assessment of its market value." *Id.* at 683.

Both this Court and the Texas Supreme Court have rejected the "premise that a dispute about a property's tax appraisal value automatically or inherently places the property's market value [at issue] . . . Nor does Section 42.26(a)(3), the specific basis for [TDSL's] appraisal challenge here, open that door." *In re Catherine Tower, LLC*, 553 S.W.2d at 685. This Court determined that the Texas Supreme Court had "dismantled the logical underpinnings of TCAD's argument" for merging the two issues. *Id.* at 684. To the extent that TCAD believes "value" must be read to include "market value," the Texas Supreme Court in *EXLP Leasing, LLC v. Galveston Central Appraisal District* provided that the "constitution refers only to the legislature's authority to set the 'value' of property for taxation. It sets no requirement that 'value' must approximate 'market value.' . . . Instead, the constitution assigns to the legislature the task of determining 'value,' providing that it 'shall be ascertained as may be provided by law.' This provision would seem to leave the Legislature free to adopt the mode of ascertaining any class of property by such method as it might deem best." 2018 Tex. LEXIS 185, at *8-9 (Tex. 2018). This Court ruled that the legislature had done so by providing its own explicit method for determining "value," and that "Section 42.26(a)(3) thus stands in contrast to a taxpayer's challenge to the underlying determination of the appraised value in itself, which is a separate ground that [TDSL] has not pursued in district court." *In re Catherine Tower*, 553 S.W.2d at 686.³

This *Crigler* decision also diverges starkly from more than twenty years of Texas jurisprudence. *See, e.g., In re APTWT, LLC*, 612 S.W.3d 85 (Tex. App.—Houston [14th Dist.] 2021, orig. proceeding) (ruling that an unequal-appraisal claim does not pivot on whether the property's appraisal is consistent with its market value, and finding the two claims distinct); *Harris Cnty. Appraisal Dist. v. United Investors Realty Trust*, 47 S.W.3d 648, 650, 655 (Tex. App.—Houston [14th Dist.] 2001, pet. denied) (affirming a trial court's decision to consider only whether the property was equally appraised relative to comparable properties appropriately adjusted, and ignoring market value).

³ This Court noted that "the analysis prescribed by Section 42.26(a)(3) does not independently determine the market value of . . . the subject property or the comparison properties" either. *In re Catherine Tower*, 553 S.W.2d at 686.

It is therefore erroneous to accommodate TCAD as “challenging the ARB’s equal appraisal value determination on the ground that it is below market value,” as opposed to “challenging the ARB’s market value determination.” *Crigler v. TDSL, Inc.*, No. 03-20-00122-CV, 2022 Tex. App. LEXIS 1193 at *15 (Tex. App.—Austin [3rd Dist.] Feb. 18, 2022). Both are equally outside the ambit of § 42.26(a)(3). It is also therefore erroneous to hold that “the statutory language providing for an appeal from ‘an order of the appraisal review board determining . . . a taxpayer protest’ does not preclude such a challenge.” *Id.* Texas courts’ annunciation of § 42.26(a)(3)’s clarity does in fact preclude such a challenge.

With respect to the second issue, the authority cited does not actually support the proposition that the “de novo” standard allows issues to be appealed that were not determined in the proceeding below. This Court addressed the concern that “[p]ermitting a district court to resolve new protest grounds would denigrate the administrative hearing process and the exclusive-remedies scheme established by the Property Tax Code” with three principal citations. *Crigler*, 2022 Tex. App. LEXIS 1193 at *15. It asserted that the “statutory scheme provides that on appeal the district court may ‘fix the appraised value of property in accordance with requirements of law if the appraised value is at issue.’ Tex. Tax Code § 42.24(1). However, “fixing the appraised value” does not speak to the method in which it may or may not be fixed on appeal. Additionally, “in accordance with the requirements of law” would point to the twenty years of jurisprudence indicating that the two matters are to be dealt with separately. The Court also pointed to *Cherokee Water Co. v. Gregg Cnty. Appraisal Dist.* that “[g]iven the appeal of the district’s appraisal is by trial de novo, the trial court clearly has power to determine market value whether it be higher or lower than the value determined by the appraisal district.” 801 S.W.2d 872, 877 (Tex. 1990). However, that case dealt with an appeal of the market value itself, merely reviewed de novo. It did not involve the addition of market value into the inquiry on the ground the appeal was de novo.

The Court also cited *Harris Cty. Appraisal Dist. v. Houston 8th Wonder Prop., LP* that “[r]egardless of what issues were presented by the property owner, the appraisal district had no grievance until the ARB altered its determination of the property’s market value and appraised value.” 395 S.W.3d 245, 251 (Tex. App.—Houston [1st Dist.] 2012, pet. denied). The Court analogized the circumstances of the Harris and Travis County Appraisal Boards in opining that each had no prior administrative remedy to exhaust, and therefore should have the right to appeal the issue of their choice from the board’s determination. This Court acknowledged that *Houston* dealt with an appeal of *both* the appraised value and the market value, unlike the present case; that case therefore cannot instruct on whether TCAD is entitled to appeal an

issue the ARB did not determine. Because the authority cited in *Crigler* is actually silent on the central issue of whether the de novo standard warrants the appeal of a non-adjudicated matter, the Court's distinction about which party is appealing and whether its administrative remedies had been exhausted is inoperative.

Given that a property's market value is *per se* irrelevant to an equality claim under § 42.26(a)(3), why would Travis Central Appraisal District—like other appraisal districts in unequal-appraisal disputes—advocate for an appeals procedure that puts at issue a property's market value when the taxpayer did not protest it? There are two likely reasons that appraisal districts seek such a process. First, to deter taxpayers from exercising their constitutionally guaranteed right to be treated equally in comparison to other property owners. Second, to keep unequal, and unfairly high, appraisals intact as a result.

Taxpayers who are unequally appraised by their local appraising entities will find their protestations weakened before they are even brought. If market value can be brought up by the appraisal district at any time, then there is no purpose in bringing the legally distinct unequal appraisal claim. This Court in *In re Catherine Tower, LLC* refused to “undermine the Section 42.26(a)(3) remedy altogether” by conflating it with market value. 553 S.W.2d at 688. TCAD's appeals tactics would become “common among appraisal districts statewide in resistance to Section 42.26(a)(3) claims.” *In re Catherine Tower, LLC*, 553 S.W.2d at 689.

The Texas Taxpayer Bill of Rights, in enacting what has become § 42.26(a)(3), intended to solidify unequal appraisal recourse for taxpayers without conflating it with appraisal districts' assessment of market value. The Legislature's mandated formula for determining a § 42.26(a)(3) claim is simple: does the government's appraised value of the disputed property exceed the median of the *government's* appraised value of comparable properties properly adjusted? TEX. TAX CODE § 42.26(a)(3). Market value is not part of this inquiry.

This case presents the Court with the opportunity to resolve this important issue on behalf of Texas taxpayers in line with the Texas Legislature's clear intent. Therefore, the Foundation respectfully requests this Court to grant Texas Disposal Systems' motion for rehearing and, consistent with the plain language of the Tax Code, hold that a market value claim and an unequal appraisal claim are distinct and separate, and that neither is appealable from a final determination on the other.

Respectfully submitted,

/s/Robert Henneke

ROBERT HENNEKE

rhenneke@texaspolicy.com

Texas Bar No. 24046058

MUNERA AL-FUHAID

mal-fuhaid@texaspolicy.com

Texas Bar No. 24094501

TEXAS PUBLIC POLICY FOUNDATION

Center for the American Future

901 Congress Avenue

Austin, Texas 78701

(512) 472-2700

CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the typeface requirements of Tex. R. App. P. 9.4(e) because it has been prepared in a conventional typeface no smaller than 14-point for text and 12-point for footnotes. This document also complies with the word-count limitations of Tex. R. App. P. 9.4(i), because it contains 1,992 words, excluding any parts exempted by Tex. R. App. P. 9.4(i)(1).

/s/Robert Henneke

ROBERT HENNEKE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing letter brief has been served by electronic service pursuant to the Texas Rules of Appellate Procedure upon the following counsel of record on the 5th day of April, 2022:

Mark Trachtenberg
mark.trachtenberg@haynesboone.com
Ryan Philip Pitts
ryan.pitts@haynesboone.com
Haynes & Boones, LLP
1221 McKinney, Suite 4000
Houston, Texas 77010-2007

Karen Evertson
karen@texaslaw.com
Mary Sanchez
mary@texaslaw.com
Evertson & Sanchez, PC
6101 Sheridan Avenue
Austin, Texas 78723
*Attorneys for Appellant
Travis Central Appraisal District*

Lorri Michel
lorri@michelgray.com
Shane Rogers
shane@michelgray.com
Michael Gray & Rogers, LLP
812 W. 11th Street, Suite 301
Austin, Texas 78701

Wallace B. Jefferson
wjjefferson@adjtlaw.com
Melanie D. Plowman
mplowman@adjtlaw.com
Alexander Dubose & Jefferson, LLP
515 Congress Avenue, Suite 2350
Austin, Texas 78701-3562
*Attorneys for Appellee
Texas Disposal Systems
Landfill, Inc.*

/s/Robert Henneke
ROBERT HENNEKE

Automated Certificate of eService

This automated certificate of service was created by the e filing system. The filer served this document via email generated by the e filing system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Robert Henneke
Bar No. 24046058
rhenneke@texaspolicy.com
Envelope ID: 63285975
Status as of 4/5/2022 3:37 PM CST

Associated Case Party: Texas Public Policy Foundation

Name	BarNumber	Email	TimestampSubmitted	Status
Yvonne Simental		ysimental@texaspolicy.com	4/5/2022 3:26:56 PM	SENT
Robert Henneke		rhenneke@texaspolicy.com	4/5/2022 3:26:56 PM	SENT
Munera Al-Fuhaid		mal-fuhaid@texaspolicy.com	4/5/2022 3:26:56 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Mark Trachtenberg		mark.trachtenberg@haynesboone.com	4/5/2022 3:26:56 PM	SENT
Michelle Meuhlen		michelle.meuhlen@haynesboone.com	4/5/2022 3:26:56 PM	SENT
Wallace Jefferson	19	wjefferson@adjtlaw.com	4/5/2022 3:26:56 PM	SENT
Karen Kocks Evertson	797745	Karen@texaslaw.com	4/5/2022 3:26:56 PM	SENT
Mary Sanchez	17570830	mary@texESlaw.com	4/5/2022 3:26:56 PM	SENT
Melanie Plowman	24002777	mplowman@adjtlaw.com	4/5/2022 3:26:56 PM	SENT
Lorri Michel	14009460	lorri@michelgray.com	4/5/2022 3:26:56 PM	SENT
Shane Rogers	24037384	shane@michelgray.com	4/5/2022 3:26:56 PM	SENT
Ryan Pitts		ryan.pitts@haynesboone.com	4/5/2022 3:26:56 PM	SENT
ES Paralegal		paralegal@texaslaw.com	4/5/2022 3:26:56 PM	SENT
TCAD Litigation		litigation@tcadcentral.org	4/5/2022 3:26:56 PM	SENT
Kimberley Baldrige		Kim@michelgray.com	4/5/2022 3:26:56 PM	SENT
Cathi Trullender		ctrullender@adjtlaw.com	4/5/2022 3:26:56 PM	SENT

No. 03-20-00122-CV

IN THE THIRD COURT OF APPEALS
AUSTIN, TEXAS

RECEIVED IN
3rd COURT OF APPEALS
AUSTIN, TEXAS

4/8/2022 3:18:47 PM

JEFFREY D. KYLE

Clerk

TRAVIS CENTRAL APPRAISAL DISTRICT, BY AND THROUGH MARYA CRIGLER,
ACTING IN HER OFFICIAL CAPACITY AS CHIEF APPRAISER OF TRAVIS CENTRAL
APPRAISAL DISTRICT

Appellant

v.

TEXAS DISPOSAL SYSTEMS LANDFILL, INC.,

Appellee

**BRIEF IN SUPPORT OF MOTION FOR REHEARING
OF AMICI CURIAE TEXAS REALTORS® AND WALGREEN CO.**

Mark S. Hutcheson
Texas State Bar No. 00796805
mark.hutcheson@property-tax.com
Daniel R. Smith
Texas State Bar No. 24013525
daniel.smith@property-tax.com
Stephen W. Grant
Texas State Bar No. 24104917
stephen.grant@property-tax.com
Popp Hutcheson, PLLC
1301 S. Mopac Expressway, Suite 430
Austin, Texas 78746
(512) 473-2661

ATTORNEYS FOR TEXAS REALTORS® AND WALGREEN CO.

TABLE OF CONTENTS

Table of Contents i

Index of Authorities..... ii

Interest of Amici Curiae iii

Argument 1

Prayer 4

Certificate of Service 5

INDEX OF AUTHORITIES

Cases

<i>Elec. Reliability Council of Tex. v. Panda Power Generation Infrastructure Fund, LLC</i> 619 S.W.3d 628 (Tex. 2021).....	3
<i>Harris Cty. Appraisal Dist. v. Kempwood Plaza Ltd.</i> 186 S.W.3d 155 (Tex. App.—Houston [1st Dist.] 2006, no pet.).....	1
<i>Harris Cty. Appraisal Dist. v. United Inv’rs Realty Tr.</i> 47 S.W.3d 648 (Tex. App.—Houston [14th Dist.] 2001, pet. denied).....	1
<i>In re APTWT, LLC.</i> 612 S.W.3d 85 (Tex. App.—Houston [14th Dist.] 2020, orig. proceeding).....	1
<i>In re Catherine Tower, LLC</i> 553. S.W.3d 679 (Tex. App.—Austin 2018, orig. proceeding).....	1, 2, 3
<i>Travis Cent. Appraisal Dist. v. Tex. Disposal Sys. Landfill, Inc.</i> No. 03-20-00122-CV, 2022 WL 495048 (Tex. App.—Austin Feb. 18, 2022, no pet. h.).....	2

INTEREST OF AMICI CURIAE

In support of Appellee's motion for rehearing, Amici Curiae, Texas Association of Realtors, Inc. (known as "Texas REALTORS®") and Walgreen Co. (together as "Amici"), submit this brief pursuant to Texas Rule of Appellate Procedure 11.

Texas REALTORS® is a statewide trade association made up of 72 local associations and approximately 150,000 members, known as REALTORS®, located across the state. Based in Austin, Texas REALTORS® has more than 70 employees. Texas REALTORS® represents REALTORS'® interests in all segments of the industry. Texas REALTORS® provides education and accreditation through certifications and designations for its members. By enforcing ethics and deciding grievances against members, Texas REALTORS® strives to elevate the standards of professional conduct for REALTORS®. Texas REALTORS® also assists with real-estate transactions by drafting forms to help REALTORS® perform their services to Texas consumers. Finally, Texas REALTORS® advocates in litigation on issues that have statewide impact for its members and their clients.

Walgreen Co. owns, leases, and operates about 750 commercial retail properties throughout Texas, including many in the greater Austin area. These properties are typically freestanding retail buildings out of which "Walgreens" conducts its business and serves its customers. Like Texas REALTORS®, Walgreen

Co. has an interest in the outcome of issues with statewide impact on commercial properties, particularly those in the retail space.

In order to ensure equal and uniform taxation of real property, Texas property owners rely on the unequal appraisal remedy found in Sections 41.43(b)(3) and 42.26(a)(3) of the Texas Tax Code. Through this brief, Amici respectfully ask the Court to withdraw or, alternatively, clarify the language in Section II.B. of its opinion in order to maintain consistency with the holding in *Harris County Appraisal District v. United Investors Realty Trust*, 47 S.W.3d 648, 654 (Tex. App.—Houston [14th Dist.] 2001, pet. denied), and its own precedent in *In re Catherine Tower, LLC*, 553 S.W.3d 679 (Tex. App.—Austin 2018, orig. proceeding).

Counsel for Amici charged no fee for preparing this brief.

ARGUMENT

Amici respectfully request that the Court withdraw Section II.B. of its opinion. It has long been the law that, for Texas property tax purposes, equal and uniform taxation prevails over taxation at market value. *Harris Cty. Appraisal Dist. v. United Inv'rs Realty Tr.*, 47 S.W.3d 648, 654 (Tex. App.—Houston [14th Dist.] 2001, pet. denied) (“If a conflict exists between taxation at market value and equal and uniform taxation, equal and uniform taxation must prevail.”); *Harris Cty. Appraisal Dist. v. Kempwood Plaza Ltd.*, 186 S.W.3d 155, 162 (Tex. App.—Houston [1st Dist.] 2006, no pet.). The priority of equal and uniform taxation over market value was confirmed in *In re Catherine Tower, LLC*, when this Court granted mandamus relief to prevent discovery that conflated market value claims with equal and uniform claims. 553 S.W.3d 679, 686–87, 689 (Tex. App.—Austin 2018, orig. proceeding) (quoting *United Investors*); *see also In re APTWT, LLC*. 612 S.W.3d 85, 89–90 (Tex. App.—Houston [14th Dist.] 2020, orig. proceeding) (quoting *United Investors*).

Section II.B. of this Court’s opinion could be interpreted in a way that conflicts with the longstanding precedent referenced above. In reversing the trial court’s dismissal of TCAD’s market value claim, this Court explained:

But TCAD’s market value claim is not challenging the ARB’s market value determination; **TCAD is challenging the ARB’s equal appraisal value determination on the ground that it is below market value.**

Travis Cent. Appraisal Dist. v. Tex. Disposal Sys. Landfill, Inc., No. 03-20-00122-CV, 2022 WL 495048, at *6 (Tex. App.—Austin Feb. 18, 2022) (emphasis added). Appraisal districts and taxing jurisdictions may mistakenly cite to this passage and argue that an equity determination may somehow be challenged on the ground that it is below market value. That is not the law in Texas, as made clear by the 14th Court of Appeals in *United Investors*. 47 S.W.3d at 654. As this Court confirmed, an equal and uniform claim is a distinct remedy that is separate from a market value claim. *In re Catherine Tower*, 553 S.W.3d at 686–87 (“The relief authorized by Section 42.26(a)(3), as Catherine correctly observes, does not hinge upon whether the subject property’s appraisal is consonant with its market value.”).

Section II.B. of the opinion, furthermore, addresses a market value claim that is moot, making this part of the opinion advisory. Specifically, the Court wrote:

As its market value claim, **TCAD asserted that “[t]he market value of [the Landfill’s] property is greater than the determination of the ARB”** and that “[t]he result of the ARB’s determination is an appraisal of the subject property below market value[.]”

Tex. Disposal Sys. Landfill, 2022 WL 495048, at *6 (emphasis added). Through this assertion, TCAD has judicially admitted that its market value claim would yield a value above the ARB’s equity determination. Because equal and uniform taxation prevails over market value, as held in *United Investors* and its progeny, TCAD’s market value claim is moot as there is no case or controversy. A ruling on TCAD’s

market value claim could not grant the relief requested by TCAD (i.e., raising the property's appraised value from its equity value to its market value) or otherwise affect the parties' rights or interests. *See Elec. Reliability Council of Tex., Inc. v. Panda Power Generation Infrastructure Fund, LLC*, 619 S.W.3d 628, 635 (Tex. 2021) ("A case becomes moot when (1) a justiciable controversy no longer exists between the parties, (2) the parties no longer have a legally cognizable interest in the case's outcome, (3) the court can no longer grant the requested relief or otherwise affect the parties' rights or interests, or (4) any decision would constitute an impermissible advisory opinion."). If equity prevails over market value, what difference would it make if the market value of the property indicated a higher value? It would make no difference at all. Such a fact would be wholly irrelevant because the court would be required under the law to apply the lower equity value.

Additionally, Section II.B. of the opinion will very likely lead to the discovery abuse that this Court intended to stop in *In re Catherine Tower*. 553 S.W.3d at 688–89. Appraisal districts would file a market value appeal under Section 42.02 of the Texas Tax Code for the purpose of discovering sensitive financial and sales information from the owner when the owner only challenged unequal appraisal of its property. This deters and punishes property owners who exercise their protest rights to ensure equal and uniform taxation through the threat of having to disclose

to the government private and confidential information that is otherwise irrelevant to their equity challenge. This was not the intent of the Legislature.

PRAYER

For these reasons, Amici respectfully request that the Court withdraw Section II.B. of its opinion. Alternatively, Amici request that the Court revise its opinion to make clear that, when there is a conflict, equity claims prevail over market value. This is consistent with *United Investors* and this Court's own precedent in *In re Catherine Tower*.

Respectfully submitted,

/s/ Mark S. Hutcheson

Mark S. Hutcheson

Texas State Bar No. 00796805

mark.hutcheson@property-tax.com

Daniel R. Smith

Texas State Bar No. 24013525

daniel.smith@property-tax.com

Stephen W. Grant

Texas State Bar No. 24104917

stephen.grant@property-tax.com

Popp Hutcheson, PLLC

1301 S. Mopac Expressway, Suite 430

Austin, Texas 78746

Telephone: (512) 473-2661

ATTORNEYS FOR TEXAS REALTORS® AND WALGREEN CO.

CERTIFICATE OF SERVICE

I certify that on April 8, 2022, I electronically filed the foregoing with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

Karen Evertson
Texas State Bar No. 00797745
karen@texaslaw.com
Mary Sanchez
Texas State Bar No. 17570830
mary@texaslaw.com
Evertson & Sanchez, P.C.
c/o Travis Central Appraisal District
Attn: Legal Department
8314 Cross Park Dr.
Austin, Texas 78754
Telephone: (512) 834-9317
Facsimile: (512) 532-6598

Mark R. Trachtenberg
Texas State Bar No. 24008169
mark.trachtenberg@haynesboone.com
Ryan P. Pitts
State Bar No. 24105941
ryan.pitts@haynesboone.com
Haynes & Boone LLP
1221 McKinney, Suite 4000
Houston, Texas 77010
Telephone: (713) 547-2000
Facsimile: (713) 547-2600

Attorneys for Appellant
Travis Central Appraisal District

Wallace B. Jefferson
Texas State Bar No. 00000019
wjjefferson@adjtlaw.com
Melanie D. Plowman
State Bar No. 24002777
mplowman@adjtlaw.com
Alexander Dubose & Jefferson LLP
515 Congress Avenue, Suite 2350
Austin, Texas 78701-3562
Telephone: (512) 482-9300

Lorri Michel
Texas State Bar No. 14009460
lorri@michelgray.com
Shane Rogers
Texas State Bar No. 24037384
shane@michelgray.com
Michel Gray Rogers, LLP
812 W. 11th Street, Suite 301
Austin, Texas 78701
Telephone: (512) 477-0200

Attorneys for Appellee
Texas Disposal Systems Landfill,
Inc.

/s/ Mark S. Hutcheson
Mark S. Hutcheson

Automated Certificate of eService

This automated certificate of service was created by the e filing system. The filer served this document via email generated by the e filing system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Carli Collins on behalf of Mark Hutcheson
Bar No. 796805
Carli.Collins@property-tax.com
Envelope ID: 63414430
Status as of 4/8/2022 3:22 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Mark Trachtenberg		mark.trachtenberg@haynesboone.com	4/8/2022 3:18:47 PM	SENT
Michelle Meuhlen		michelle.meuhlen@haynesboone.com	4/8/2022 3:18:47 PM	SENT
Wallace Jefferson	19	wjefferson@adjtlaw.com	4/8/2022 3:18:47 PM	SENT
Karen Kocks Evertson	797745	Karen@texaslaw.com	4/8/2022 3:18:47 PM	SENT
Mary Sanchez	17570830	mary@texESlaw.com	4/8/2022 3:18:47 PM	SENT
Melanie Plowman	24002777	mplowman@adjtlaw.com	4/8/2022 3:18:47 PM	SENT
Lorri Michel	14009460	lorri@michelgray.com	4/8/2022 3:18:47 PM	SENT
Shane Rogers	24037384	shane@michelgray.com	4/8/2022 3:18:47 PM	SENT
Ryan Pitts		ryan.pitts@haynesboone.com	4/8/2022 3:18:47 PM	SENT
ES Paralegal		paralegal@texaslaw.com	4/8/2022 3:18:47 PM	SENT
TCAD Litigation		litigation@tcadcentral.org	4/8/2022 3:18:47 PM	SENT
Kimberley Baldrige		Kim@michelgray.com	4/8/2022 3:18:47 PM	SENT
Cathi Trullender		ctrullender@adjtlaw.com	4/8/2022 3:18:47 PM	SENT
Ginger Grimm		gg Grimm@adjtlaw.com	4/8/2022 3:18:47 PM	SENT
Gina Verlander		gverlander@adjtlaw.com	4/8/2022 3:18:47 PM	SENT
Mark Hutcheson		mark.hutcheson@property-tax.com	4/8/2022 3:18:47 PM	SENT
Stephen Grant		stephen.grant@property-tax.com	4/8/2022 3:18:47 PM	SENT
Daniel R.Smith		Daniel.Smith@property-tax.com	4/8/2022 3:18:47 PM	SENT

Associated Case Party: Texas Public Policy Foundation

Name
Yvonne Simental
Munera Al-Fuhaid

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Carli Collins on behalf of Mark Hutcheson
Bar No. 796805
Carli.Collins@property-tax.com
Envelope ID: 63414430
Status as of 4/8/2022 3:22 PM CST

Associated Case Party: Texas Public Policy Foundation

Robert Henneke		rhenneke@texaspolicy.com	4/8/2022 3:18:47 PM	SENT
----------------	--	--------------------------	---------------------	------

STATE of TEXAS
HOUSE of REPRESENTATIVES



HUGH D. SHINE

DISTRICT 55
BELL COUNTY

6 April 2022

Jeffrey D. Kyle, Clerk of the Court
Third Court of Appeals
PO Box 12547
Austin, Texas 78711

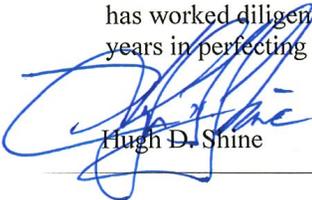
RE: *Crigler v. TDSL*, No. 03-20-00122-CV; Motion for Rehearing

Dear Mr. Kyle:

I am writing pursuant to Texas Rule of Appellate Procedure Rule 11 to express my support for the motion for rehearing in the above-referenced appeal. In the recent *Crigler v. TDSL* decision regarding jurisdiction of the Travis County Appraisal District's (TCAD) market value claim, the Court improperly conflated excessive market value and equal and uniform determinations. These are separate and independent challenges under long standing property tax law. The language of the Court indicates that a determination of market value is required, or at least permitted, in an equal and uniform case despite the years of case law holding otherwise.

I have heard concerns from many distinguished property tax groups and organizations that I work with as a member of the Texas House of Representatives' Ways and Means Committee, and I urge the Court to correct its ruling overturning the district court's ruling dismissing TCAD's market-value claim.

Please accept my letter of support for the motion for rehearing as a member of the Texas House of Representatives' Ways and Means Committee and a member who has worked diligently with property-tax groups and organizations for the past six years in perfecting Texas's property tax code.


Hugh D. Shine



HUGH.SHINE@HOUSE.TEXAS.GOV

Capitol: P.O. Box 2910 • Austin, Texas 78768-2910 • (512) 463-0630 • (512) 463-0937 fax
District: 4 South First Street • Temple, Texas 76501 • (254) 742-7616

ACCEPTED
03-20-00122-CV
63299471
THIRD COURT OF APPEALS
AUSTIN, TEXAS
4/6/2022 8:05 AM
JEFFREY D. KYLE
CLERK

RECEIVED IN
3rd COURT OF APPEALS
AUSTIN, TEXAS
4/6/2022 8:05:12 AM
JEFFREY D. KYLE
Clerk

Certificate of Service

I certify that on April 6, 2022, a copy of the foregoing amicus letter by State Representative Hugh Shine was served on all parties.

/s/ Hugh D. Shine
Representative Hugh D. Shine

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Ginger Grimm on behalf of Melanie Plowman
Bar No. 24002777
ggrimm@adjtlaw.com
Envelope ID: 63299471
Status as of 4/6/2022 8:37 AM CST

Associated Case Party: Texas Public Policy Foundation

Name	BarNumber	Email	TimestampSubmitted	Status
Yvonne Simental		ysimental@texaspolicy.com	4/6/2022 8:05:12 AM	SENT
Robert Henneke		rhenneke@texaspolicy.com	4/6/2022 8:05:12 AM	SENT
Munera Al-Fuhaid		mal-fuhaid@texaspolicy.com	4/6/2022 8:05:12 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Mark Trachtenberg		mark.trachtenberg@haynesboone.com	4/6/2022 8:05:12 AM	SENT
Michelle Meuhlen		michelle.meuhlen@haynesboone.com	4/6/2022 8:05:12 AM	SENT
Wallace Jefferson	19	wjefferson@adjtlaw.com	4/6/2022 8:05:12 AM	SENT
Karen Kocks Evertson	797745	Karen@texaslaw.com	4/6/2022 8:05:12 AM	SENT
Mary Sanchez	17570830	mary@texESlaw.com	4/6/2022 8:05:12 AM	SENT
Melanie Plowman	24002777	mplowman@adjtlaw.com	4/6/2022 8:05:12 AM	SENT
Lorri Michel	14009460	lorri@michelgray.com	4/6/2022 8:05:12 AM	SENT
Shane Rogers	24037384	shane@michelgray.com	4/6/2022 8:05:12 AM	SENT
Ryan Pitts		ryan.pitts@haynesboone.com	4/6/2022 8:05:12 AM	SENT
ES Paralegal		paralegal@texaslaw.com	4/6/2022 8:05:12 AM	SENT
TCAD Litigation		litigation@tcadcentral.org	4/6/2022 8:05:12 AM	SENT
Kimberley Baldrige		Kim@michelgray.com	4/6/2022 8:05:12 AM	SENT
Cathi Trullender		ctrullender@adjtlaw.com	4/6/2022 8:05:12 AM	SENT
Ginger Grimm		ggrimm@adjtlaw.com	4/6/2022 8:05:12 AM	SENT
Gina Verlander		gverlander@adjtlaw.com	4/6/2022 8:05:12 AM	SENT



TEXAS APARTMENT ASSOCIATION

1011 SAN JACINTO BLVD., STE. 600 • AUSTIN, TEXAS 78701-1931
TELEPHONE 512/479-6252 • FAX 512/479-6291 • www.taa.org

RECEIVED IN
THIRD COURT OF APPEALS
AUSTIN, TEXAS

April 6, 2022

4/6/2022 10:15:54 AM

JEFFREY D. KYLE
Clerk

Jeffrey D. Kyle, Clerk of the Court
Third Court of Appeals
P.O. Box 12547
Austin, Texas 78711

RE: *Crigler v. Texas Disposal Systems Landfill, Inc.*
No. 03-20-00122-CV
Motion for Rehearing

To the Honorable Third Court of Appeals:

Texas Apartment Association (“TAA”) respectfully submits this letter supporting Texas Disposal Systems Landfill, Inc.’s motion for rehearing. This letter is being submitted pursuant to Texas Rule of Appellate Procedure 11.

TAA is a non-profit statewide trade association that provides advocacy, education, and communication for the Texas rental housing industry. TAA serves all types of rental professionals, including property owners, builders, developers, property management firms, and service providers.

Four out of ten Texans rent their homes and TAA’s member companies provide more than 2.3 million of these homes and units across Texas. Our members pay more than \$3.5 billion in property taxes annually on \$150 billion in property value, helping to finance the public schools and pay first responders of Texas. The Court’s decision holding that jurisdiction existed over TCAD’s market value claim is of serious concern to TAA and its members. TAA urges reconsideration for the reasons discussed below.

- **The opinion effectively removed the constitutional right of TAA members to equal and uniform appraisals for taxation purposes by merging a market value claim with an equal and uniform claim.**

The Court, by holding that an appraisal district can bring a market value challenge to determine the equal and uniform value, effectively merged the two separate and distinct claims into one. As a result, the opinion all but eliminated the constitutional right of TAA's members to equal and uniform appraisals for taxation purposes by allowing appraisal districts to inject a determination of the property's market value into an equal and uniform challenge. This holding is contrary to established Texas case law recognizing the separate nature of these two types of claims.

Until now, Texas courts have been consistent in holding that an independent appraisal of market value is not part of an equal and uniform challenge brought under Section 42.26(a)(3) of the Texas Property Tax Code and that establishing the property's market value cannot defeat a claim of unequal appraisal. *Harris County Appraisal District v. United Investors Realty Trust*, 47 S.W.3d 648, 650, 655 (Tex. App.—Houston [14th Dist.] 2001, pet. denied) (holding trial court properly ignored the property's market value and considered only whether the property was unequally appraised with comparable properties appropriately adjusted); *Duke Realty Ltd. P'ship v. Harris Cty. Appraisal Dist.*, No. 14-15-00543-CV, 2016 WL 3574666, *3 (Tex. App.—Houston [14th Dist.] June 20, 2016, no pet.) (mem. op.) (recognizing an equal and uniform determination requires only a comparison of the appraised of the property at issue with the median appraised value of comparable properties appropriately adjusted).

Consistent with *United Investors* and its progeny, in 2018, this Court properly rejected TCAD's previous attempts to merge the separate and distinct claims into one. *In re Catherine Tower*, 553 S.W.3d 679, 685-688 (Tex. App.—Austin 2018, orig. proceeding) (recognizing claims as distinct and that a determination of unequal appraisal does not hinge upon whether the subject property's appraisal is consonant with its market value); see also *In re APTWT, LLC*, 612 S.W.3d 85 (Tex. App.—Houston [14th Dist.] 2021, orig. proceeding) (same).

TAA urges the Court to grant rehearing and employ the same reasoning the Court used in *Catherine Tower* to hold that the trial court correctly ruled there was no jurisdiction over TCAD's asserted market value claim.

- **The opinion ignores the plain wording of Section 42.02 and improperly expands the chief appraiser's ability to sue taxpayers.**

The decision ignores the plain wording of Section 42.02 of the Texas Property Tax Code and as a result expands the chief appraiser's right of appeal well beyond the plain and limiting language the Legislature utilized.

The language used by the Legislature limited an appraisal district's right to appeal to an order of the ARB determining a taxpayer protest. Here, it is undisputed that the ARB did not determine a taxpayer protest of excessive market value and never issued an order determining a taxpayer protest on market value.

This expansion of the chief appraiser's right to sue property owners in district court goes well beyond what the Legislature intended. The result is alarming and places property owners at risk of being sued by the government on grounds never protested and never determined by the ARB. As a result, the Court's opinion will likely have a chilling effect on our members' pursuit of their various rights to protest set forth in Section 41.41(a) of the Property Tax Code because the opinion creates a fear that a protest will lead to being sued by an appraisal district on grounds never protested.

For the reasons set forth herein, the Texas Apartment Association urges that the motion for rehearing be granted.

In compliance with Rule 11, I state that no fee was paid or is to be paid for preparing this amicus letter.

Respectfully submitted,

/s/ Sandy Garcia Hoy
Sandy Garcia Hoy
State Bar No. 24087759
General Counsel
Texas Apartment Association

Certificate of Service

I certify that on April 6, 2022, a copy of the foregoing amicus letter by Texas Apartment Association was served on all parties.

/s/ Sandy G. Hoy
Sandy G. Hoy
SBN 24087759

Automated Certificate of eService

This automated certificate of service was created by the e filing system. The filer served this document via email generated by the e filing system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Ginger Grimm on behalf of Melanie Plowman
Bar No. 24002777
ggrimm@adjtlaw.com
Envelope ID: 63307569
Status as of 4/6/2022 10:30 AM CST

Associated Case Party: Texas Public Policy Foundation

Name	BarNumber	Email	TimestampSubmitted	Status
Yvonne Simental		ysimental@texaspolicy.com	4/6/2022 10:15:54 AM	SENT
Robert Henneke		rhenneke@texaspolicy.com	4/6/2022 10:15:54 AM	SENT
Munera Al-Fuhaid		mal-fuhaid@texaspolicy.com	4/6/2022 10:15:54 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Mark Trachtenberg		mark.trachtenberg@haynesboone.com	4/6/2022 10:15:54 AM	SENT
Michelle Meuhlen		michelle.meuhlen@haynesboone.com	4/6/2022 10:15:54 AM	SENT
Wallace Jefferson	19	wjefferson@adjtlaw.com	4/6/2022 10:15:54 AM	SENT
Karen Kocks Evertson	797745	Karen@texaslaw.com	4/6/2022 10:15:54 AM	SENT
Mary Sanchez	17570830	mary@texESlaw.com	4/6/2022 10:15:54 AM	SENT
Melanie Plowman	24002777	mplowman@adjtlaw.com	4/6/2022 10:15:54 AM	SENT
Lorri Michel	14009460	lorri@michelgray.com	4/6/2022 10:15:54 AM	SENT
Shane Rogers	24037384	shane@michelgray.com	4/6/2022 10:15:54 AM	SENT
Ryan Pitts		ryan.pitts@haynesboone.com	4/6/2022 10:15:54 AM	SENT
ES Paralegal		paralegal@texaslaw.com	4/6/2022 10:15:54 AM	SENT
TCAD Litigation		litigation@tcadcentral.org	4/6/2022 10:15:54 AM	SENT
Kimberley Baldrige		Kim@michelgray.com	4/6/2022 10:15:54 AM	SENT
Cathi Trullender		ctrullender@adjtlaw.com	4/6/2022 10:15:54 AM	SENT
Ginger Grimm		ggrimm@adjtlaw.com	4/6/2022 10:15:54 AM	SENT
Gina Verlander		gverlander@adjtlaw.com	4/6/2022 10:15:54 AM	SENT

TEXAS TAXPAYERS AND RESEARCH ASSOCIATION

400 West Fifteenth Street, Suite 400

Austin, Texas 78701 www.ttara.org

Phone: 512-472-8838

Fax: 512-472-2636

RECEIVED IN
3rd COURT OF APPEALS
AUSTIN, TEXAS

4/7/2022 12:10:59 PM

JEFFREY D. KYLE
Clerk

April 7, 2022

Jeffrey D. Kyle, Clerk of the Court
Court of Appeals, Third District of Texas
P.O. Box 12547
Austin, Texas 78711

RE: Motion for Rehearing
Cause No. 03-20-00122-CV; *Travis Central Appraisal District, By and Through
Marya Crigler, Acting In Her Official Capacity as
Chief Appraiser of Travis Central Appraisal
District v. Texas Disposal Systems Landfill, Inc.*

To the Honorable Members of the Court:

Pursuant to Rule 11, Texas Rules of Appellate Procedure, *amicus curiae*
Texas Taxpayers and Research Association files this letter in the above-referenced
cause in support of Texas Disposal Systems Landfill, Inc.'s motion for re-hearing.

Statement of Interest

The Texas Taxpayers and Research Association (TTARA) has a strong
interest in this proceeding before the Court and wishes to express our deepest
concerns for the negative ramifications it portends for the ability of property owners
to pursue an appeal of an unequal appraisal of the owner's property.

In that vein, we offer the following thoughts on the important tax policy issue involved in the above referenced cause: the appropriate scope of review when a central appraisal district appeals an appraisal review board's order determining a property owner's claim of unequal appraisal, as prohibited by Art. VIII, § 1(a), Texas Constitution, and effectuated by the Property Tax Code.

TTARA is a non-profit, non-partisan membership-supported organization of businesses, trade associations, tax practitioners and individuals that endorse and advocate for sound state and local fiscal policy. Our more than 200 member companies come from a broad range of economic sectors and business forms.

For seventy years, TTARA (including its predecessor organizations the Texas Association of Taxpayers and the Texas Research League) has been recognized as the state's pre-eminent organization specializing in tax and fiscal policy and, as such, has long worked closely with legislators and executive officials in pursuit of a rational, balanced, and efficient system of taxation. Among our members are some of the largest property taxpayers in Texas and, thus, a quality system of ad valorem tax administration is vitally important to TTARA and to the Texas economy.

Consequently, TTARA has been an active, influential participant in the crafting and implementation of Texas property tax law, including adoption of the Property Tax Code in 1979 by the 66th Texas Legislature. We also have steadfastly defended the integrity of the Code against frequent incursions in both the Legislature

and the courts. In view of our longtime, intimate, and extensive participation in the formation of Texas' tax policy, we believe it is appropriate for us to comment on this critical property valuation appeal issue.

This letter brief has been prepared in the ordinary course of TTARA's operations. No fee has been paid for the preparation or filing of this letter brief.

Argument

Texas law gives a property owner two distinct bases for protesting the appraisal of the owner's property before the appraisal review board (ARB). The first, §41.41(a)(1), Tax Code, challenges the appraisal district's "determination of the appraised value of the owner's property." The second, §41.41(a)(2), Tax Code, alleges the "unequal appraisal of the owner's property." A property owner may protest an appraisal on both or only one of these grounds, and a determination of one does not determine the other. The purpose of a protest based on over-appraisal (i.e., a market value protest) is to assure that the appraisal district has adhered to the Tax Code's market value standard of appraisal. The purpose of a protest based on unequal appraisal is to enforce the equal and uniform standard embodied in Art. 8, § 1(a), Texas Constitution ("taxation shall be equal and uniform").

The evidence pertinent to each type of protest is likewise distinct. In a market value protest under §41.41(a)(1), the property owner claims that the appraisal district appraised the property above market value, that is, it over-valued the property. The

evidence in support of such a claim, for example, may be specific aspects of the condition of the property that lower its market value, inaccuracy in the data used by the appraisal district, or comparable sales in the area indicating that the owner's property has been over-appraised. The appropriate remedy for over-appraisal is to reduce the appraisal to a value consistent with market value based on that property's particular characteristics. *See* § 42.25, Tax Code (prescribing remedy for appeal based on appraisal in excess of market value).

For an unequal appraisal protest under §41.41(a)(2), the determinative evidence involves whether the property's appraised value "is equal to or less than the median appraised value of a reasonable number of comparable properties appropriately adjusted." *See* § 41.43(b)(3), Tax Code. In order to show unequal appraisal, the property owner must establish that the owner's property was appraised above the median appraisal of comparable properties. For example, if the appraisal district appraises the property owner's home using the home's recent sales price but does not adjust the value of the comparable homes in the area accordingly, the district is guilty of unequal appraisal because it has appraised the owner's home at a higher value than that of the owner's neighbors' properties. The appropriate remedy for unequal appraisal based on a comparison of the appraised values of like properties, as TDS Landfill, Inc. claims, is to reduce the appraised value of the owner's property to the median level of appraisal of a representative number of comparable properties.

See § 42.26(a)(3), Tax Code. The market value of the property is irrelevant to this determination, as Texas courts have repeatedly held.

If a property owner is unhappy with the ARB's determination of either the property's market value or its level of appraisal—or both—the owner may appeal the ARB's order to district court pursuant to § 42.01, Tax Code. Because the generally informal ARB hearings are not governed by the procedural and evidentiary requirements of the Administrative Procedures Act and do not generate a record upon which an appeal may be made, the standard of review in district court is *de novo*. A property owner may appeal an ARB order to district court on five different grounds, one of which is the determination of a § 41.41 protest by the ARB. *See* § 42.01(a)(1)(A), Tax Code. The appraisal district, however, may only appeal an ARB order determining either a property owner's protest or a property owner's motion to correct the tax roll under § 25.25, Tax Code, (see § 42.02(a), Tax Code) and then only if the property has a value of at least \$1 million and the appraisal district obtains written consent of the appraisal district board of directors to file the appeal. §§ 42.02(b), (c), Tax Code.

In our view, the Court's opinion conflicts with the statutory scheme devised by the Legislature and should be revisited, first because it permits the appraisal district to proceed with an appeal in the absence of an ARB order determining market value, and second because it blurs the distinction between two distinct, alternative

grounds for a taxpayer protest and appeal. The plain language of § 42.02(a) restricts the appraisal district's right of protest to "an order of the appraisal review board" determining a taxpayer protest. As previously described, Texas law authorizes alternative grounds for protest that require distinct types of evidence with entirely different remedies. In this case, the only order issued by the ARB determined the unequal appraisal protest, not the market value protest. Even supposing that the appraisal district's appeal of the ARB's order is not barred by its failure to obtain written consent of the board as required by law, there is no statutory basis upon which the district may appeal a market value determination that was *never* made. The Legislature strictly limited the right of appeal of an appraisal district for good reason: property owners, big, medium, or small, should not be forced to relitigate (at great cost) ARB decisions against the government, which in many cases has superior resources compared to the property owner. The statutory requirement that the appraisal district board of directors consent in writing to an appraisal district appeal is part and parcel of the same policy, as is the provision allowing prevailing property owners to recover attorney's fees under certain circumstances. *See* § 42.29, Tax Code. These provisions and others form a larger statutory scheme designed to level the playing field for taxpayers and ensure that appraisal districts only appeal ARB orders they believe are clearly erroneous or fraudulent.

Finally, we are concerned that the Court's opinion could open the door to appraisal district appeals that are not currently authorized by the Tax Code and enable appraisal districts to obtain discovery of market value information irrelevant to the property owner's unequal appraisal protest. Texas courts have consistently held that an appraisal district may not obtain discovery of market value information from a property owner in an unequal appraisal appeal because, as we have noted, such information is irrelevant. Under the Court's opinion, however, if the *appraisal district* appeals an ARB order determining a protest on the basis of unequal appraisal, the district could discover that information and use it to evade the ARB process altogether. As the Legislature designed it, this process can only be triggered by a taxpayer protest under § 41.41 or a taxing unit challenge under §41.03. If the appraisal district disagrees with the ARB, only then does a limited right to appeal exist. To the extent that the Court's opinion permits the appraisal district to appeal something other than the ARB's order and drag a taxpayer into court to defend an issue the taxpayer did not pursue before the ARB, it turns the process on its head. If a tax policy change this significant is to be made, the Legislature ought to do it and not the courts.

Conclusion and Prayer

TTARA appreciates the opportunity to express our concerns regarding the important tax policy issues involved in this case and urges the Court to grant the motion for

rehearing.

Respectfully submitted,

/s/ George S. Christian

GEORGE S. CHRISTIAN

State Bar No. 04227300

400 West 15th Street, Ste. 1400

Austin, Texas 78701

512.791.1429

george@georgechristian.com

ATTORNEY FOR *AMICUS*

***CURIAE* TEXAS**

TAXPAYERS AND

RESEARCH ASSOCIATION

CERTIFICATE OF COMPLIANCE

I certify that this document contains 1,544 words in the portions of the document that are subject to the word limits of Texas Rule of Appellate Procedure 9.4(i), as measured by the undersigned's word-processing software.

/s/ George S. Christian

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *amicus* letter was served on counsel of record by using the Court's CM/ECF system on April 7, 2022, addressed as follows:

The Honorable Wallace B. Jefferson

Melanie Plowman

ALEXANDER DUBOSE AND JEFFERSON LLP

515 Congress Avenue, Suite 2350

Austin, Texas 78701

Lorri Michel
Shane Rogers
MICHAEL GRAY & ROGERS, LLP
812 West 11th St., Suite 301
Austin, Texas 78701

Counsel for Appellee Texas Disposal Systems Landfill, Inc.

Mark Trachtenberg
Ryan Pitts
HAYNES & BOONE LLP
1221 McKinney, Suite 4000
Houston, Texas 77010

Karen Evertson
Mary Sanchez
EVERTSON & SANCHEZ, P.C.
8314 Cross Park Drive
Austin, Texas 78754

Counsel for Appellant Travis Central Appraisal District, by and through Marya Crigler, acting in her official capacity as Chief Appraiser of Travis Central Appraisal District

/s/ George S. Christian

Automated Certificate of eService

This automated certificate of service was created by the e filing system. The filer served this document via email generated by the e filing system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

George Christian on behalf of George Christian
Bar No. 4227300
george@thechristiano.com
Envelope ID: 63361429
Status as of 4/7/2022 12:36 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Mark Trachtenberg		mark.trachtenberg@haynesboone.com	4/7/2022 12:10:59 PM	SENT
Michelle Meuhlen		michelle.meuhlen@haynesboone.com	4/7/2022 12:10:59 PM	SENT
Wallace Jefferson	19	wjefferson@adjtlaw.com	4/7/2022 12:10:59 PM	SENT
Karen Kocks Evertson	797745	Karen@texaslaw.com	4/7/2022 12:10:59 PM	SENT
Mary Sanchez	17570830	mary@texESlaw.com	4/7/2022 12:10:59 PM	SENT
Melanie Plowman	24002777	mplowman@adjtlaw.com	4/7/2022 12:10:59 PM	SENT
Lorri Michel	14009460	lorri@michelgray.com	4/7/2022 12:10:59 PM	SENT
Shane Rogers	24037384	shane@michelgray.com	4/7/2022 12:10:59 PM	SENT
Ryan Pitts		ryan.pitts@haynesboone.com	4/7/2022 12:10:59 PM	SENT
ES Paralegal		paralegal@texaslaw.com	4/7/2022 12:10:59 PM	SENT
TCAD Litigation		litigation@tcadcentral.org	4/7/2022 12:10:59 PM	SENT
Kimberley Baldrige		Kim@michelgray.com	4/7/2022 12:10:59 PM	SENT
Cathi Trullender		ctrullender@adjtlaw.com	4/7/2022 12:10:59 PM	SENT
Ginger Grimm		gg Grimm@adjtlaw.com	4/7/2022 12:10:59 PM	SENT
Gina Verlander		gverlander@adjtlaw.com	4/7/2022 12:10:59 PM	SENT

Associated Case Party: Texas Public Policy Foundation

Name	BarNumber	Email	TimestampSubmitted	Status
Yvonne Simental		ysimental@texaspolicy.com	4/7/2022 12:10:59 PM	SENT
Munera Al-Fuhaid		mal-fuhaid@texaspolicy.com	4/7/2022 12:10:59 PM	SENT
Robert Henneke		rhenneke@texaspolicy.com	4/7/2022 12:10:59 PM	SENT

BARKHURST HINOJOSA P.C.

RECEIVED IN
3rd COURT OF APPEALS
AUSTIN, TEXAS
4/21/2022 3:16:30 PM
JEFFREY D. KYLE
Clerk

April 21, 2022

Mr. Jeffrey D. Kyle
Clerk of the Court
Third Court of Appeals
P.O. Box 12547
Austin, Texas 78711

RE: No. 03-20-00122-CV
Crigler v. Texas Disposal Systems Landfill, Inc.
Motion for Rehearing

To the Honorable Court of Appeals:

Pursuant to Texas Rule of Appellate Procedure Rule 11, CVS Pharmacy, Inc. (CVS) respectfully files this letter in support of Texas Disposal Systems Landfill, Inc.'s motion for rehearing.

CVS is one of the nation's largest providers of pharmacy and other healthcare services through its retail locations, walk-in medical clinics, and specialty and long-term care pharmacies. With over 800 pharmacies and other business operations in Texas such as distribution centers, call centers, IT centers and offices, CVS has a substantial real estate presence in Texas. As such, CVS is significantly affected by changes in the state's property tax laws. With this in mind, CVS asks the Court to rehear the portion of its decision finding jurisdiction existed over TCAD's market value claim for two primary reasons:

I.

The opinion created a disturbing expansion of the government's power to sue taxpayers.

Section 42.02 of the Tax Code clearly and plainly limits an appraisal district's right to sue taxpayers to only that of an appeal of an ARB order determining a taxpayer protest. Despite this clear and plain language, the Court nevertheless found that jurisdiction existed over TCAD's market value claim even though the ARB

never determined a taxpayer protest of excessive market value and did not issue an order determining a taxpayer protest on market value. There was simply no order determining market value that could be appealed.

This expansion of the government’s power to sue taxpayers well beyond intent of the Texas Legislature is of significant concern to CVS. “Moreover, when [courts] stray from the plain language of a statute, [they] risk encroaching on the Legislature’s function to decide what the law should be.” *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 866 (Tex. 1999). Courts “may not judicially revise statutes because we believe they are bad policy.” *Univ. of Tex. v. Garner*, 595 S.W.3d 645, 651 (Tex. 2019) (per curiam).

II.
**The Court’s decision undermines the requirement for equal
and uniform taxation in Texas by conflating the market
value claim with the equal and uniform claim.**

Texas courts have steadily held that an independent appraisal of market value is not part of an equal and uniform challenge brought under Section 42.26(a)(3) of the Texas Property Tax Code and that establishing the property’s market value cannot defeat a claim of unequal appraisal. *Harris County Appraisal District v. United Investors Realty Trust*, 47 S.W.3d 648, 650, 655 (Tex. App.—Houston [14th Dist.] 2001, pet. denied) (holding trial court properly ignored the property’s market value and considered only whether the property was unequally appraised with comparable properties appropriately adjusted); *Duke Realty Ltd. P’ship v. Harris Cty. Appraisal Dist.*, No. 14-15-00543-CV, 2016 WL 3574666, *3 (Tex. App.—Houston [14th Dist.] June 20, 2016, no pet.) (mem. op.) (recognizing an equal and uniform determination requires only a comparison of the appraisal of the property at issue with the median appraised value of comparable properties appropriately adjusted); *In re Catherine Tower*, 553 S.W.3d 679, 685-688 (Tex. App.—Austin 2018, orig. proceeding) (recognizing claims as distinct and that a determination of unequal appraisal does not hinge upon whether the subject property’s appraisal is consonant with its market value); *see also In re APTWT, LLC*, 612 S.W.3d 85 (Tex. App.—Houston [14th Dist.] 2021, orig. proceeding) (same).

CVS greatly values the requirement for equal and uniform taxation and urges the Court to grant rehearing and either (1) hold that jurisdiction did not exist over TCAD's market value claim; or (2) clarify that the Court's opinion did not implicitly or otherwise overrule the long standing precedent cited above, because a determination of market value is not relevant nor in any way is related to determining an unequal appraisal claim.

For the reasons stated herein, CVS respectfully asks the Court to grant the motion for rehearing.

In compliance with Rule 11, I state that no fee was paid or is to be paid for preparing this amicus letter.

Respectfully submitted,

/s/ Paul D. Barkhurst

Paul D. Barkhurst

State Bar No. 00790266

E-mail: pbarkhurst@bhlawpc.com

Joe R. Hinojosa

State Bar No. 24007368

E-mail: jhinojosa@bhlawpc.com

BARKHURST & HINOJOSA, P.C.

11107 Wurzbach Road, Suite 701

San Antonio, Texas 78230

(210) 226-7800 – Telephone

(210) 226-7802 – Facsimile

CERTIFICATE OF SERVICE

I certify that on April 20, 2022, a copy of the foregoing amicus letter by CVS Pharmacy, Inc. was served on all parties.

s/ Paul D. Barkhurst

Paul D. Barkhurst

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Trish Toscano on behalf of Paul Barkhurst
Bar No. 00790266
trish@bhlawpc.com
Envelope ID: 63787918
Status as of 4/21/2022 3:26 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Mark Trachtenberg		mark.trachtenberg@haynesboone.com	4/21/2022 3:16:30 PM	SENT
Michelle Meuhlen		michelle.meuhlen@haynesboone.com	4/21/2022 3:16:30 PM	SENT
Daniel R.Smith		Daniel.Smith@property-tax.com	4/21/2022 3:16:30 PM	SENT
Wallace Jefferson	19	wjefferson@adjtlaw.com	4/21/2022 3:16:30 PM	SENT
Karen Kocks Evertson	797745	Karen@texaslaw.com	4/21/2022 3:16:30 PM	SENT
Mary Sanchez	17570830	mary@texESlaw.com	4/21/2022 3:16:30 PM	SENT
Melanie Plowman	24002777	mplowman@adjtlaw.com	4/21/2022 3:16:30 PM	SENT
Lorri Michel	14009460	lorri@michelgray.com	4/21/2022 3:16:30 PM	SENT
Shane Rogers	24037384	shane@michelgray.com	4/21/2022 3:16:30 PM	SENT
Ryan Pitts		ryan.pitts@haynesboone.com	4/21/2022 3:16:30 PM	SENT
ES Paralegal		paralegal@texaslaw.com	4/21/2022 3:16:30 PM	SENT
Mark Hutcheson		mark.hutcheson@property-tax.com	4/21/2022 3:16:30 PM	SENT
TCAD Litigation		litigation@tcadcentral.org	4/21/2022 3:16:30 PM	SENT
Kimberley Baldrige		Kim@michelgray.com	4/21/2022 3:16:30 PM	SENT
Cathi Trullender		ctrullender@adjtlaw.com	4/21/2022 3:16:30 PM	SENT
Stephen Grant		stephen.grant@property-tax.com	4/21/2022 3:16:30 PM	SENT
Ginger Grimm		ggrimm@adjtlaw.com	4/21/2022 3:16:30 PM	SENT
Gina Verlander		gverlander@adjtlaw.com	4/21/2022 3:16:30 PM	SENT
Trish Toscano		trish@bhlawpc.com	4/21/2022 3:16:30 PM	SENT
Chelsea Garza		rec@bhlawpc.com	4/21/2022 3:16:30 PM	SENT
Paul Barkhurst		pbarkhurst@bhlawpc.com	4/21/2022 3:16:30 PM	SENT
Joe RHinojosa		jhinojosa@bhlawpc.com	4/21/2022 3:16:30 PM	SENT

Associated Case Party: Texas Public Policy Foundation

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Trish Toscano on behalf of Paul Barkhurst
Bar No. 00790266
trish@bhlawpc.com
Envelope ID: 63787918
Status as of 4/21/2022 3:26 PM CST

Associated Case Party: Texas Public Policy Foundation

Name	BarNumber	Email	TimestampSubmitted	Status
Yvonne Simental		ysimental@texaspolicy.com	4/21/2022 3:16:30 PM	SENT
Robert Henneke		rhenneke@texaspolicy.com	4/21/2022 3:16:30 PM	SENT
Munera Al-Fuhaid		mal-fuhaid@texaspolicy.com	4/21/2022 3:16:30 PM	SENT



Texas Association of Property Tax Professionals
P.O. Box 933
Helotes, TX 78023

May 9, 2022

Mr. Jeffrey D. Kyle, Clerk of the Court
Third Court of Appeals
PO Box 12547
Austin, Texas 78711

RECEIVED IN
3rd COURT OF APPEALS
AUSTIN, TEXAS

5/9/2022 1:17:02 PM

JEFFREY D. KYLE
Via E Filing

ACCEPTED
03-20-00122-CV
64312981
THIRD COURT OF APPEALS
AUSTIN, TEXAS
5/9/2022 1:17 PM
JEFFREY D. KYLE
CLERK

Re: Case No. 03-20-00122-CV, Travis Central Appraisal District, By and Through Marya Crigler, Acting In Her Official Capacity as Chief Appraiser of Travis Central Appraisal District, Appellant v. Texas Disposal Systems Landfill, Inc., Appellee

TO THE HONORABLE THIRD COURT OF APPEALS

Pursuant to Texas Rule of Appellate Procedure 11, *Amicus Curiae* Texas Association of Property Tax Professionals respectfully submits this letter brief in support of Appellee Texas Disposal Systems Landfill, Inc.'s Motion for Rehearing in the above-referenced proceeding.

Statement of Amicus Interest

Amicus Texas Association of Property Tax Professionals ("TAPTP") was formed in 1988 to aid property taxpayers through advancing and improving the tax consulting profession in the areas of competence, professionalism and rigorous ethical standards. TAPTP works to promote and support a Texas property tax system that preserves and protects taxpayer rights, while furthering cooperation amongst taxpayers, consultants and state and local property tax agencies. A list of TAPTP's current Officers and Directors is attached as Exhibit "A" hereto. No attorney fee or compensation has been paid or will be paid for preparation of this *Amicus* brief.

Argument

The Texas Property Tax Code ("Code") as it now exists has been 40 years in the making. At its 1979 enactment, the Code, for the first time, separated the entities charged with valuing taxable property from those empowered to collect and spend the taxes levied on those values. Creation of a system of county appraisal districts ("CADs") to estimate taxable values was an essential first step.

But it took decades more for a combination of legislative amendments, interpretive caselaw, and delegated Comptroller rule making and procedures to create the Code's current balance of taxpayer and appraisal district rights, remedies and responsibilities.

That balance, which the Third Court's ruling would severely de-stabilize, stems from the Code's clear delineations of authority at different stages between CADs, taxpayers, Appraisal Review Boards ("ARBs") and District Courts. CADs begin the process each Spring by updating the "appraisal records" on each county property as far as ownership, address, the CAD's initial proposed (a.k.a. "notice") value for that year, and other details specified in Code § 25.02.

CADs also must review, continue, remove, approve or deny exemptions or other requested favorable appraisal treatment, plus furnish, where Code-required, written notice to owners of any adverse CAD treatment and explanation of taxpayer protest rights as to any CAD-assigned property details with which the owner disagrees. CADs carry out each of these initial activities pursuant to express authority the Texas Legislature grants them in the Code.

As creatures of statute, created specifically by and in the Code (in Chapter 6), CADs, by definition, have only those powers which the Code grants them. Those grants must also be explicit, not inferred or implied, given a longstanding consistent body of Texas Supreme Court caselaw confirming that tax statutes (except on questions of exemption eligibility) are construed strictly and narrowly against tax authorities and liberally in favor of taxpayers.¹

After CADs complete their initial record compilation and notification duties, the Code shifts authority from CADs to owners to decide which of these proposed CAD treatments of their property are acceptable, and which are sufficiently erroneous or objectionable to merit protest. Taxpayer protest rights extend beyond

¹ See, e.g., *Bullock v. Statistical Tabulating Corp.*, 549 S.W.2d 166, 169 (Tex.1977); *Wilson Commc'ns, Inc. v. Calvert*, 450 S.W.2d 842, 844 (Tex.1970); *Morris v. Hous. Indep. Sch. Dist.*, 388 S.W.3d 310 (Tex. 2012).

CAD-notified issues to any of Code § 41.41(a)'s eight distinct categories to include a ninth "catch-all" protest right for any other taxpayer-adverse CAD or ARB action.²

The choice of which, if any, of the many potential issues to protest in a given year and present to the ARB for determination rests solely with property owners. This exclusivity is easily confirmed by a glance at Code Chapter 41, whose Subchapter C, "Taxpayer Protest," outlines taxpayer protest rights and procedures, but no such rights for statutory CADs. Accordingly, CADs have neither their own protest rights, nor power to unilaterally expand, limit or otherwise alter taxpayer protest rights or the scope of ARB protest authority. The choice of protest issues and scope of ARB decision-making is ultimately for taxpayers alone.

Once taxpayers make those choices, balanced ARB hearing procedures permit both taxpayers and CADs to present evidence and argument, review opposing evidence, and question the opponent's witnesses, all within the scope of the issues presented by the protesting property owner for ARB determination.³

The Code's administrative protest system was originally intended to resolve most protest issues without clogging courts or burdening taxpayers with tax litigation expense. Statutory appeal rights from ARB rulings were included mainly to protect taxpayer due process where ARB hearings failed to resolve disputes.

Legislators assumed that CAD appeals from the decisions of its own ARB would be especially rare. However, recognizing the potential for abuse by over-zealous chief appraisers, plus the generally chilling effect on the system of subjecting owners who successfully protested their taxes to being sued by their own CAD as a result, Legislators, in Code § 42.02, added an intended layer of protective

² Consistent with their separate and distinct constitutional underpinnings, protests of market value, on the one hand, and unequal appraisal, on the other, are assigned separate protest categories in § 41.41(a)(1) and (a)(2).

³ Owners are free to withdraw one or more original protest issues at the start of their presentation, which removes them from the hearing and ARB jurisdiction.

Third Court of Appeals
May 9, 2022
Page 4

oversight, withholding from Chief Appraisers the direct authority to appeal its ARB's rulings and instead vesting that authority in each CAD's Board of Directors, along with the explicit statutory responsibility to review the merits of proposed CAD appeals and pre-approve any such filing in writing.

As noted earlier, CADs are statutory creatures vested only with the powers the Code grants them. Mandatory strict construction of tax statutes means that those powers must be granted explicitly, not inferred or implied. The Texas Supreme Court best summarized this "ancient pro-taxpayer presumption" that the Court "ha[s]consistently applie[d]" as follows:

The reach of an ambiguous tax statute must be construed "strictly against the taxing authority and liberally for the taxpayer." In other words, a tax must apply unequivocally. This presumption arises from an old English rule that "the sovereign is bound to express its intention to tax in clear and unambiguous language."

Tracfone Wireless, Inc. et al v. Commission on State Emergency Communications, 397 S.W.3d 173, 182 (Tex. 2013).

Permitting CAD's to bring suit against their own taxpayers, except as specifically Code-authorized, is unwise, and creates a dangerous precedent. More dangerous and fundamentally threatening to the Code's balanced system of rights and responsibilities painstakingly crafted over the last forty years is the Court's holding that a CAD can counter-sue a taxpayer in District Court, under the guise of an "appeal" from an order of its ARB, on an issue the owner did not ask the ARB to decide, and which the Order which Appellant purports to appeal never determined.

The Court asserts that the "*statutory language providing for an appeal from 'an order of the appraisal review board determining ... a taxpayer protest' does not preclude such a challenge.*" Op at 6. (Emphasis added). But that is the proper approach to construing § 42.02, a tax statute which, as such, is undeniably subject to strict construction of these provisions "*against the taxing authority and liberally for*

the taxpayer,” as mandated in *Tracfone*, as well as the companion holdings cited in footnote 1 and a long series of other consistent holdings.

Liberalizing § 42.02, a Code provision whose express purpose is to define the scope of CAD appeal authority from ARB orders, in favor of taxpayers, and strictly against a taxing authority CAD (in this case Appellant), requires limiting § 42.02's grant of appeal authority to CADs to that explicitly and unambiguously spelled out in § 42.02's authorizing language.

That language permits CADs to “. . . appeal an order of the appraisal review board determining a taxpayer protest . . .” but nothing more. Here, the taxpayer protest presented for ARB determination, the determination, and the ARB order dealt solely with the property's equal and uniform value. Nothing in § 42.02's express wording permits CAD appeals (regardless of Board approval) on issues beyond the scope of the (1) taxpayer's protest, (2) the ARB's determination and (3) the ARB's issued order on that determination.

In adopting a *de novo* review standard to distinguish Code Chapter 42 appeals from substantial evidence review, the Texas Legislature did not intend to somehow enlarge CAD appeal rights far beyond § 42.02's express grant to any issue beyond the ARB's order of determination that the CAD chose to appeal, particularly the CAD's own prior determination of market value which remained undisturbed by the ARB's determinations and order.

Strict construction of § 42.02 precludes Appellant or Texas courts enlarging the appeal rights granted therein by inference or implication. As the Supreme Court confirmed in *Tracfone*, “imprecise statutes must be interpreted ‘most strongly against the government, and in favor of the citizen’ and we will not extend the reach of an ambiguous tax by implication...” *Tracfone*, 397 S.W.3d, at 183.

Permitting Appellant to sue the taxpayer here over the property's market value violates all of these principles. Nor does the concept of *de novo* review by new trial as extending to the “entire case” create appeal rights that the Legislature never bestowed. Just as the “case,” in a *de novo* review from an actual trial ruling, still

exists within the scope of the issues actually pled and presented by that parties, here the corresponding “case” appealed for *de novo* review consists of the issues actually presented to, and determined by, the ARB from whose order the appeal is taken.

Although Code §42.23's *de novo* review provision allows parties to disputes which move beyond accelerated annual mass appraisal/protest/ARB hearing stage the opportunity for development of more detailed arguments and evidence on the protested issues,⁴ nowhere does that Code language suggest, let alone expressly create, an expansion of CAD appeal authority beyond § 42.02's plain language.

Beyond the impermissible expansion of Code-granted CAD authority, in violation of strict construction mandates, the Court's opinion depends on several logical non-starters:

First, the Court created the opportunity for Appellant to present market value evidence on a property whose market value is already conclusively established for the tax year in question. Appellant initially appraised the property at its market value, pursuant to Appellant's express statutory obligations under Code § 23.01(a). (“By statute, appraised value is market value. Tex. Tax Code Ann. § 23.01(a)...” *Harris Cty. Appr. Dist. v United Investors Realty*, 47 S.W.3d 648, 654 (Tex. App. - Houston (14th Dist.] 2001). Appellant's asserted market value was, as true of all such initial “notice” values, subject to taxpayer protest as either excessive or unequal.

Appellee here protested on both grounds, but then withdrew its market value protest before the ARB hearing. That withdrawal deprived Appellee of any right to further contest market value. As to Appellant, the Code not only omits any grant of authority to CADs to dispute their own adopted market value in the absence of an ARB market value determination, but in fact explicitly prohibits such unauthorized challenges to the appraisal roll's certified contents.⁵

⁴ This opportunity stands in contrast to the “substantial evidence” review standard adopted in Texas and elsewhere for review of various other types of administrative rulings.

⁵Except as provided by Chapters 41 and 42 of this code and by this section, the appraisal

Appellant successfully convinced the Court to invent CAD authority to repudiate its own property findings (a dangerous precedent which would cast the entire panoply of annual CAD property determinations into doubt and lingering uncertainty, in glaring, irreconcilable conflict with strict construction.

Second, the idea of permitting Appellant to present market value evidence to prove the ARB's equal and uniform value incorrect because it is less than market value is fundamentally flawed. Not only is market value already established here (eliminating any valid basis for introducing evidence thereof), market value evidence), Appellant's underlying premise, that equal and uniform value may not be less than market value, is demonstrably false.

CADs have been peddling the baseless argument that equal and uniform value may not be less than market value since before the *United Investors* ruling, where the Court of Appeals, citing the Constitutional mandate of equal and uniform taxation, plus consistent appellate holdings from six sister states and the United States Supreme Court (based on equal protection principles) rejected it, summarizing its findings as follows:

We hold, as do these cases, that it is unfair, and constitutionally prohibited, to require one taxpayer to pay a tax based on market values if other taxpayers are paying a rate that is lower than the market value of their properties. If we were to allow this, one landowner would be paying property taxes disproportionately to other landowners. The constitution expressly prohibits this. Tex. Const. art. VIII, § 1(a). If a conflict exists between taxation at market value and equal and uniform taxation, equal and uniform taxation must prevail.

United Investors, 47S.W.3d, at 654 (emphasis added)

roll may not be changed." Texas Property Tax Code § 25.25(a)

Indeed, neither the Code nor cases support CAD attempts to conflate market and equal and uniform value by claiming the latter may not be less than the former. Not only does Code § 41.41 permit owners to separately protest market value and equal and uniform value (a.k.a. unequal appraisal) or both, the Comptroller's Appraisal Review Board Manual, which governs ARB procedures and provides various form templates, including a prototype ARB Order Determining Protest or Notice of Dismissal, includes confirming language directly that "[i]f changes to the appraisal records are ordered due to a determination of excessive appraised or market value and also a determination of unequal appraisal, **the lower of the two determinations shall be shown in the appraisal records.**"⁶

This "lower of" value entitlement stems both from the constitutional supremacy of equal and uniform appraisal rights as outlined in *United Investors* above, and from the comparative mechanism for determining equal and uniform value as outlined in Code § 42.26(a)(3).

Here, because (1) market value is already established, (2) Appellee is entitled to assessment at the "lower of" market and equal and uniform value, and (3) Appellee appealed only equal and uniform value, receipt of market value evidence on appeal is neither necessary nor relevant to determining the final value on appeal.

Appellee can no longer seek a reduction of market value, and, nor can Appellant seek an increase in its own established market value, now final and certified on the appraisal rolls. Even Appellant's re-urging of its baseless complaint that the equal and uniform value is less than market value requires admission of no evidence as to a market value which is already fixed, final and certified in the appraisal records.

In short, no legitimate basis for permitting Appellant to pursue a market value appeal exists, because there are no circumstances where admitting additional market value evidence is either appropriate or necessary to establish any relevant fact at

⁶ See highlighted language in "Order Determining Protest or Notice of Dismissal," 2021 Appraisal Review Board Manual, Texas Comptroller, attached as Exhibit "B" hereto.

issue. Appellant's purpose in nevertheless appealing from a non-existent ARB market value determination is, as recognized by this Court in its 2018 holding in *In Re Catherine Tower, LLC*, 553 S.W.3d 679, to inject market value evidence into equal and uniform value appeals for the sole purpose of undermining, both deterring, and punishing, taxpayers who avail themselves of Code § 42.26(a)(3)'s unequal appraisal remedies. Appellant's efforts in this regard are directly at odds with the Texas Constitution's unequivocal equal and uniform taxation mandate which Code § 42.26 exists to implement.

Finally, if equal and uniform appeals could be defeated, as this Court has presumed, with evidence of a higher market value, viable taxpayer equal and uniform remedies would cease to exist, because CADs could attack each equal and uniform protest and appeal with market value appeals, based on this Court's validation of the premise that market value must be proven to set the minimum level of any equal and uniform appeal determination.

Thus, each equal and uniform dispute would immediately devolve into a fight over market value,⁷ since neither side would offer evidence of an equal and uniform value greater than market value. Taxpayer rights to equal and uniform appraisal would be stripped away, and Article 8 Section 1(a)'s explicit mandate eviscerated.

Aggrieved taxpayers, stripped of effective Tax Code enforcement of constitutionally guaranteed protections, would soon respond with actions brought outside the Code's intended exclusive system of remedies and procedures, citing Article 8 as well as equal protection and other grounds, further destabilizing a statutory protest and appeal system already under the stresses and challenges of this fast-growing state.

For these reasons, *Amicus* Texas Association of Property Tax Professionals respectfully urges the Court to grant Appellee's Motion for Rehearing and correct its opinion.

⁷A valuation standard which, in contrast to equal and uniform tax valuation, the Texas Constitution has never mandated.

Third Court of Appeals
May 9, 2022
Page 10

Respectfully,

Joseph M. Harrison IV

Joseph M. Harrison IV, General Counsel
Texas Association of Property Tax Professionals

CERTIFICATE OF COMPLIANCE

I certify that this document contains 2,964 words in the portions of the document that are subject to the word limits of Texas Rule of Appellate Procedure 9.4(i), as measured by the undersigned's word-processing software.

/s/ Joseph M. Harrison IV

Third Court of Appeals
May 9, 2022
Page 11

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *amicus* letter was served on counsel of record by using the Court's CM/ECF system on May 9, 2022, addressed as follows:

The Honorable Wallace B. Jefferson
Melanie Plowman
ALEXANDER DUBOSE AND JEFFERSON LLP
515 Congress Avenue, Suite 2350
Austin, Texas 78701

Lorri Michel
Shane Rogers
MICHAEL GRAY & ROGERS, LLP
812 West 11th St., Suite 301
Austin, Texas 78701
Counsel for Appellee Texas Disposal Systems Landfill, Inc.

Mark Trachtenberg
Ryan Pitts
HAYNES & BOONE LLP
1221 McKinney, Suite 4000
Houston, Texas 77010

Karen Evertson
Mary Sanchez
ERTSON & SANCHEZ, P.C.
8314 Cross Park Drive
Austin, Texas 78754
Counsel for Appellant Travis Central Appraisal District, by and through Marya Crigler, acting in her official capacity as Chief Appraiser of Travis Central Appraisal District

/s/ Joseph M. Harrison IV

EXHIBIT "A"

**TAPTP Leadership 2022
Officers & Board of Directors**

Officers

President

Steve Laas
Morrison & Head LP
9430 Research Blvd., Suite 1-400
Austin, TX 78759
Phone: 512-906-0671
Email: steve@mh-tx.com

Vice President

Gary Rivas
SWBC
9311 San Pedro Ave., Suite 725
San Antonio, TX 78216
Phone: 210-376-2319
Email: gary.rivas@swbc.om

Secretary/Treasurer

Dawn Brady Morris
Texas Protax Austin
8322 Cross Park Drive
Austin, TX 78754
Phone: 512-339-6671
Email: dbrady@texasprotax.com

Immediate Past

Pablo Franco
Wilson-Franco
11000 Richmond Ave, Suite 350
Houston, TX 77042
Phone: 713-223-7648
Email: paulf@wilson-franco.com

Executive Committee Member at Large

Ray Head
Morrison & Head LP
9430 Research Blvd., Suite 1-400
Austin, TX 78759
Phone: 512-906-0662
Email: ray@mh-tx.com

Legal Counsel

Joseph Harrison, IV
Harrison & Duncan, PLLC
1009 C. Street
Floresville, TX 78114
Phone: 830-393-0500
Email: jharrison@hddhlaw.com

Directors

Charles Lammert

Mattox, Terrell & Lammert, Inc.
1614 Avenue B
Katy, TX 77493
Phone: 281-391-1001
Email: charlesl@mattoxtterrell.com

Kathleen Donovan

Geary, Porter & Donovan
16475 Dallas Parkway, Suite 400
Addison, TX 75001
Phone: 972-349-2292
Email: kdonovan@gpd.com

Trey Weaver

Ryan, LLC
112 East Pecan, Suite 2315
San Antonio, TX 78205
Phone: 210-366-2960
Email: trey.weaver@ryan.com

Henry Mehrdad

Bettencourt Tax Advisors
740 N. Post Oak Rd., Suite 400
Houston TX 77024
Phone: 713-263-6114
Email: hmehrdad@btanow.com

James Sutton

InVoke Tax Partners
12221 Merit Dr., Suite 1200
Dallas, TX 75251
Phone: 496-206-4214
Email: james.sutton@invoke.tax

Chimice Brown

Marvin F. Poer & Company
12720 Hillcrest Rd., Suite 900
Dallas, TX 75230
Phone: 972-770-1100
Email: chimicebrown@mfpoer.com

Executive Director

Nancy Boudreaux
TAPTP Headquarters
P O Box 933
Helotes, TX 78023
Phone: 210-872-2078
Fax: 210-372-1449
Email: nancy@tapt.org

EXHIBIT "B"

Glenn Hegar
Texas Comptroller of Public Accounts

Appraisal Review Board Manual

as of

January 2021

EXHIBIT 18
Order Determining Protest or Notice of Dismissal

Form 50-221

Appraisal Review Board _____ County, Texas Property Legal Description:
Case No. _____
Owner's Name: _____
Property Account No: _____

ORDER DETERMINING PROTEST OR NOTICE OF DISMISSAL

On _____, the Appraisal Review Board of _____ County, Texas, heard the protest of _____ concerning the appraisal records for tax year _____.

The appraisal review board (ARB) delivered proper notice of the date, time and place of the hearing. The property owner or agent and the chief appraiser of the appraisal district (CAD) were given the opportunity to testify and to present evidence. After considering the evidence and arguments presented at the hearing, the ARB has determined that the protest concerned the following action(s) permitted by Tax Code Section 41.41(a):

- Incorrect appraised or market value
- unequal appraisal
- inclusion of the property on the appraisal records
- denial in whole or in part of a partial exemption
- determination that land does not qualify for appraisal according to Tax Code Chapter 23, Subchapters C, D, E or H
- determination of the appropriate damage assessment rating under Tax Code Section 11.35
- any other matter permitted by Tax Code Section 41.41(a)

Based on the evidence, the ARB makes the following determination(s) as indicated by a mark and hereby issues the following as its ORDER DETERMINING PROTEST OR NOTICE OF DISMISSAL:

- The ARB lacks jurisdiction to determine the protest and hereby dismisses the protest.
- The property's appraised value is excessive, and the appraisal records should be changed to \$ _____ from the CAD value* of \$ _____.*
- The property's market value is excessive, and the appraisal records should be changed to \$ _____ from the CAD value* of \$ _____.*
- The appraised or market value of the subject property is not excessive and the appraisal records should not be changed or should be increased. The appraised value is \$ _____, and the market value is \$ _____.
- The subject property was unequally appraised and the appraisal records should be adjusted to reflect a value of \$ _____.*
- The subject property was not unequally appraised and the appraisal records should reflect the appraised value of \$ _____.
- The subject property qualified for the exemption for which application was made and the appraisal records should be changed accordingly.
- The subject property qualified for a temporary exemption under Tax Code Section 11.35 and should be assigned a damage assessment rating of Level _____.
- The subject property qualified for special appraisal and the appraisal records should be changed to reflect an appraised value of \$ _____.
- The property owner's protest concerning other matters permitted by Tax Code Section 41.41(a) is upheld and the appraisal records should be changed to reflect the following change(s): _____
- The property owner's protest concerning other matters permitted by Tax Code Section 41.41(a) is denied and the appraisal records should not be changed.

If changes to the appraisal records are ordered due to a determination of excessive appraised or market value and also a determination of unequal appraisal, the lower of the two determinations shall be shown in the appraisal records.

sign here _____ Date _____
Chair, Appraisal Review Board

* as shown in the appraisal records submitted to the ARB by the chief appraiser under Tax Code Section 25.22 or 25.23.

Form developed by: Texas Comptroller of Public Accounts, Property Tax Assistance Division For additional copies, visit: comptroller.texas.gov/taxes/property-tax
50-221 • 11-19/15

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Roseann Wood on behalf of Joseph Harrison IV
Bar No. 09116150
rosewood@legalcounselltexas.com
Envelope ID: 64312981
Status as of 5/9/2022 1:20 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Trish Toscano		trish@bhlawpc.com	5/9/2022 1:17:02 PM	SENT
Chelsea Garza		rec@bhlawpc.com	5/9/2022 1:17:02 PM	SENT
Paul Barkhurst		pbarkhurst@bhlawpc.com	5/9/2022 1:17:02 PM	SENT
Joe RHinojosa		jhinojosa@bhlawpc.com	5/9/2022 1:17:02 PM	SENT
Mark Trachtenberg		mark.trachtenberg@haynesboone.com	5/9/2022 1:17:02 PM	SENT
Wallace Jefferson	19	wjefferson@adjtlaw.com	5/9/2022 1:17:02 PM	SENT
Karen Kocks Evertson	797745	Karen@texaslaw.com	5/9/2022 1:17:02 PM	SENT
Mary Sanchez	17570830	mary@texESlaw.com	5/9/2022 1:17:02 PM	SENT
Melanie Plowman	24002777	mplowman@adjtlaw.com	5/9/2022 1:17:02 PM	SENT
Lorri Michel	14009460	lorri@michelgray.com	5/9/2022 1:17:02 PM	SENT
Shane Rogers	24037384	shane@michelgray.com	5/9/2022 1:17:02 PM	SENT
Michelle Meuhlen		michelle.meuhlen@haynesboone.com	5/9/2022 1:17:02 PM	SENT
Daniel R. Smith		Daniel.Smith@property-tax.com	5/9/2022 1:17:02 PM	SENT
Ryan Pitts		ryan.pitts@haynesboone.com	5/9/2022 1:17:02 PM	SENT
ES Paralegal		paralegal@texaslaw.com	5/9/2022 1:17:02 PM	SENT
TCAD Litigation		litigation@tcadcentral.org	5/9/2022 1:17:02 PM	SENT
Kimberley Baldrige		Kim@michelgray.com	5/9/2022 1:17:02 PM	SENT
Cathi Trullender		ctrullender@adjtlaw.com	5/9/2022 1:17:02 PM	SENT
Stephen Grant		stephen.grant@property-tax.com	5/9/2022 1:17:02 PM	SENT
Ginger Grimm		gg Grimm@adjtlaw.com	5/9/2022 1:17:02 PM	SENT
Gina Verlander		gverlander@adjtlaw.com	5/9/2022 1:17:02 PM	SENT
Mark Hutcheson		mark.hutcheson@property-tax.com	5/9/2022 1:17:02 PM	SENT

Associated Case Party: Texas Public Policy Foundation

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Roseann Wood on behalf of Joseph Harrison IV
Bar No. 09116150
rosewood@legalcounseltexas.com
Envelope ID: 64312981
Status as of 5/9/2022 1:20 PM CST

Associated Case Party: Texas Public Policy Foundation

Name	BarNumber	Email	TimestampSubmitted	Status
Yvonne Simental		ysimental@texaspolicy.com	5/9/2022 1:17:02 PM	SENT
Robert Henneke		rhenneke@texaspolicy.com	5/9/2022 1:17:02 PM	SENT
Munera Al-Fuhaid		mal-fuhaid@texaspolicy.com	5/9/2022 1:17:02 PM	SENT