STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF ROSCOMMON

HIGGINS LAKE PROPERTY OWNERS ASSOCIATION, HOWARD SCHULTZ both individually and on behalf of 149 OLD STAGE ROAD - LLC; AMY GREGORIO both individually and on behalf of 205 GRAND BLVD LLC; JOHN GREGORIO both individually and on behalf of 205 GRAND BLVD, LLC; BRYAN BURKE both individually and on behalf of 205 SCOTCH PINE LLC; THOMAS HOFFMEYER both individually and on behalf of 310 LAKESHORE FAMILY LLC; JOHN ALLABEN both individually and on behalf of ALLABEN TRUST; ARTHUR LOEFFLER both individually and on behalf of ARTHUR A & CHERYL A LOEFFLER; IRENE BACSANYI both individually and on behalf of BACSANYI IRENE W TRUST; MARGARET BADER both individually and on behalf of BADER MARGARET E TRUST; JANICE BALDWIN both individually and on behalf of BALDWIN JANICE S TRUST 4/12/2001; JAMES BALGER both individually and on behalf of BALGER JAMES D & SUE C TRUST; SUE BALGER both individually and on behalf of BALGER JAMES D & SUE C TRUST; DAVID BARAN both individually and on behalf of BARAN DAVID W & CAROL W TRUST; KATHERINE STEPHENS both individually and on behalf of BARBARA S MORTON TRUST; BARRY MCGINNIS both individually and on behalf of BARRY AND LEE ANN MCGINNIS TRUST; LETA BENNISON both individually and on behalf of BENNISON LETA M TRUST; CHRISTOPHER WAGNER both individually and on behalf of BETTY HISSONG TRUST; KAREN SPANGLER both individually and on behalf of BOGOS MARY L. TRUST; ROBERT CRAIG both individually and on behalf of BOJISU LLC; KAREN BOYAJIAN both individually and on behalf of BOYAJIAN KAREN M TRUST; CINDY BOYD both individually and on behalf of BOYD LIVING TRUST; BRADLEY FREY both individually and on behalf of BRADLEY FREY TRUST; CHARLES BROOKS both individually and on behalf of BROOKS CHARLES W & SUSAN A TRUST; BRUCE CARLETON both individually and on behalf of BRUCE CARLETON TRUST; LAWRENCE M BURNSIDE both individually and on behalf of BURNSIDE LAWRENCE M TRUST BURNSIDE VICTORIA L TRUST; TIMOTHY CALDWELL both individually and on behalf of CALDWELL LIVING TRUST; CAMERON FREEMAN both individually and on behalf of

Case No.: 25-727523-AA
Hon. Robert W. Bennett

CAMERON FREEMAN; CRAIG PECK both individually and on behalf of CAMP PECK LTD; MARLO PECK both individually and on behalf of CAMP PECK LTD; CARL SCHILLER both individually and on behalf of CARL & CAROL SCHILLER; ANN CARLSEN both individually and on behalf of CARLSEN PAUL & ANN; TONY CIAVAGLIA both individually and on behalf of CARMELA CIAVAGLIA TRUST; CAROL SABLE both individually and on behalf of CAROL SABLE; CHARLENE DORRANCE both individually and on behalf of CHARLENE E. DORRANCE TRUST; CHARLES DEWEY both individually and on behalf of CHARLES N DEWEY JR TRUST U/A/D 2/28/89; JANICE MONTROSS both individually and on behalf of CHRISTINE MONTROSS; RAYMOND CHURCH both individually and on behalf of CHURCH TRUST; ANNE LATVALA both individually and on behalf of CLUB MICHIGGI, INC.; KIM MCNAMARA both individually and on behalf of CLUB MICHIHIGGI; LINDA NEWTON both individually and on behalf of CLUB MICHIHIGGI; ROBERT COOK both individually and on behalf of CLUB MICHIHIGGI; CRAIG SCHROEDER both individually and on behalf of CLUB MICHIHIGGI INC; KENNETH GILBERT both individually and on behalf of CLUB MICHIHIGGI INC; MICHAEL SPALLA both individually and on behalf of CLUB MICHIHIGGI INC; SCOTT SOUTHLAND both individually and on behalf of CLUB MICHIHIGGI INC; MARYLEE BOUGHNER both individually and on behalf of CLUB MICHIHIGGI INC.; SCOTT HAID both individually and on behalf of CLUB MICHIHIGGI INC.; AALEA SKRYCKI both individually and on behalf of CLUB MICHIHIGGI, INC.; FRANK HIRDNING both individually and on behalf of CLUB MICHIHIGGI, INC.; JAN LATVALA both individually and on behalf of CLUB MICHIHIGGI, INC.; MARILYN CORNELL both individually and on behalf of CORNELL FAMILY TRUST; DENNIS CORTE both individually and on behalf of CORTE TRUST; CRAIG KEMPF both individually and on behalf of CRAIG & SUE KEMPF LIVING TRUST; GARY CRONENWETT both individually and on behalf of CRONENWETT LIVING TRUST; DANIEL ALDERMAN both individually and on behalf of DANIEL & JACQUELINE ALDERMAN TRUST; DANIEL DIONISE both individually and on behalf of DANIEL AND ELLEN DIONISE TRUST; DANIEL FERWERDA both individually and on behalf of DANIEL M & CYNTHIA K TRUST; DAVID ALTMAN both individually and on behalf of DAVID & WENDY ALTMAN

TRUST; DAVID ALLAR both individually and on behalf of DAVID ALLAR AND BETTY ALLAR REVOCABLE TRUST; DAVID DIONISE both individually and on behalf of DAVID DIONISE TRUST; DAVID DUBES both individually and on behalf of DAVID DUBES; DAVID BATCHELOR both individually and on behalf of DAVID J BATCHELOR REVOCABLE LIVING TRUST; CAROL ARAN both individually and on behalf of DAVID W & CAROL W TRUST; DEBORAH KRCHMAR both individually and on behalf of DEBORAH K KRCHMAR TRUST; DEBRA HARDIN both individually and on behalf of DEBRA L HARDIN TRUST; STACY DEXTER-PRIEBE both individually and on behalf of DEXTER; LARRY DIEMER both individually and on behalf of DIEMER LARRY D & COLLEEN B TRUST; WYNN DRAPER-BRYANT both individually and on behalf of DONALD L. BRYANT & WYNN A. DRAPER-BRYANT TRUST; DOUGLAS LATTNER both individually and on behalf of DOUGLAS K LATTNER TRUST 06/05/2023; DOUGLAS OREN both individually and on behalf of DOUGLAS OREN; THOMAS DWYER both individually and on behalf of DWYER THOMAS F & MARIA R DWYER TRUST; EARL TOWNSEND both individually and on behalf of EARL TOWNSEND JR LIMITED FAMILY PARTNERSHIP; ELAINE BAUMGARTEL both individually and on behalf of EBT-PINEWOODS TRUST; JOHN DEBEER both individually and on behalf of EBT-PINEWOODS TRUST; LENETTE C. TOMAK both individually and on behalf of EDWARD & LENETTE TOMAK; DEANNA TAYLOR both individually and on behalf of EDWARD L TAYLOR & DEANNA M TAYLOR LIVING TRUST; EDWARD TAYLOR both individually and on behalf of EDWARD L TAYLOR & DEANNA M TAYLOR LIVING TRUST; KAREN EHINGER both individually and on behalf of EHINGER KAREN P TRUST 04/16/08; ELEANOR COWEN both individually and on behalf of ELEANOR R COWEN HIGGINS LAKE TRUST; PATTI ELGERSMA both individually and on behalf of ELGERSMA PATTI J TRUST 06/12/2003; ELIZABETH CAMP both individually and on behalf of ELIZABETH H CAMP TRUST; KRISTIN ROHRBECK both individually and on behalf of ESANDI ROHRBECK TRUST; PAUL & BARBARA FERGUSON both individually and on behalf of FERGUSON TRUST AGREEMENT 2015; MARION FOSTER both individually and on behalf of FOSTER MARION COLBY TRUST 1999; MARY BETH SCHMITT

both individually and on behalf of FRITZ HELENE F TRUST; BILL GAGLIARDI both individually and on behalf of GAGLIARDI WILLIAM T ETAL; MARK GAGNON both individually and on behalf of MARK & NANCY GAGNON TRUST; GARY WOLF both individually and on behalf of GAR WOLF TRUST; CHERI KRESGE both individually and on behalf of GENTRY FAMILY COTTAGE LLC; GERALD MCKENNA both individually and on behalf of GERALD T & AMY M MCKENNA TRUST; GARY GERLACH both individually and on behalf of GERLACH GARY TRUST; GLENN GREGORY both individually and on behalf of GLENN & SHARON GREGORY TRUST; DOUGLAS GRAHAM both individually and on behalf of GRAHAM FAMILY TRUST; THERESE GRANT both individually and on behalf of GRANT THERESE TRUST; GREGORY GAYLOR both individually and on behalf of GREGORY F GAYLOR, SR TRUST; JOHN MAZUR both individually and on behalf of HAASIENDA LLC; MARY NIMOCKS both individually and on behalf of HAASIENDA LLC; ROBERT NIMOCKS both individually and on behalf of HAASIENDA LLC; SHERI ALEXANDER both individually and on behalf of HALL FAMILY COTTAGE TRUST; JOHN HAMILTON both individually and on behalf of HAMILTON JOHN B TRUST; HARVEY AND JUNE FEOLE both individually and on behalf of HARVEY AND JUNE FEOLE; GAY HEUSNER both individually and on behalf of HEUSNER FAMILY LLC; DONALD HEYS both individually and on behalf of HEYS FAMILY COTTAGE; MARY BEGM both individually and on behalf of HIGGINS LAKE LLC; JUDY BROWN both individually and on behalf of HIGGINS LAKE RENTAL PROPERTIES, LLC; KATHE RAY both individually and on behalf of HILLCREST LAKE SHORES ASSOCIATION; MARTHA KELLEY both individually and on behalf of HOFFMAN COTTAGE LLC; BENJAMIN COCHRAN both individually and on behalf of HOME FREE PINEWOODS, LLC; JAMES BROWN both individually and on behalf of JAMES D. BROWN JR AND MELANIE N. BROWN TRUST; MELANIE BROWN both individually and on behalf of JAMES D. BROWN JR AND MELANIE N. BROWN TRUST; JAMES BARNWELL both individually and on behalf of JAMES M. BARNWELL; GLENN FAUSZ both individually and on behalf of JANE R. FAUSZ TRUST; JANE FAUSZ both individually and on behalf of JANE R. FAUSZ, TRUST; JANICE JAMESON both individually and on behalf of JANICE JAMESON TRUST; JAY BARON both individually and on behalf of

JAY AND BETH BARON TRUST; BARBARA MCKENZIE both individually and on behalf of JEFFREY L & BARBARA MCKENZIE TRUST; JENNIFER WALTER both individually and on behalf of JENNIFER F WALTER TRUST; JOANNE BERNEST both individually and on behalf of JOANNE C BERNEST TRUST; JOHN BAIRD both individually and on behalf of JOHN A. BAIRD LIVING TRUST; JOHN VANDENBERG both individually and on behalf of JOHN AND SUSAN VANDENBERG TRUST; JOHN DAVIS both individually and on behalf of JOHN DAVIS TRUST; JOHN FINK both individually and on behalf of JOHN M AND CHARLOTTE F TRUST; LISBETH O'HARA both individually and on behalf of JOHN STANLEY GALEHOUSE JR A&R LIVING TR DATED FEB 3 2014 AS AMEN; JEISELLE ORTISI both individually and on behalf of JOHN V. & JEISELLE T. ORTISI TRUST; JOHN ORTISI both individually and on behalf of JOHN V. & JEISELLE T. ORTISI TRUST; JULIE SMITH both individually and on behalf of JULIE K. SMITH, TRUSTEE; JUNE E. HELFRICH both individually and on behalf of JUNE E. HELFRICH TRUST; GERALD JUSCO both individually and on behalf of GERALD M JUSCO TRUST; KATHLEEN TROCK both individually and on behalf of KATHLEEN M TROCK TRUST 08/18/2004; WILMA HANEY both individually and on behalf of KENNETH WHANEY AND WILMA J HANEY LIVING TRUST; GRAHAME BURROW both individually and on behalf of KPC HOLDINGS LLC; DARRIN KROGMAN both individually and on behalf of KROGMAN DARRIN ROBERT TRUST; DEBBIE HAYES both individually and on behalf of LAKESHORE MEMORIES LLC; SHARON CAHN both individually and on behalf of LAKEWOOD ASSOCIATION; SUSAN LUDWIG SPARKS both individually and on behalf of LAKEWOOD ASSOCIATION; DUDLEY CAHN both individually and on behalf of LAKEWOOD ASSOCIATION OF HIGGINS LAKE; LAWRENCE LALONDE both individually and on behalf of LALONDE LAURA C & LAWRENCE L TRUST 9/19/02; BRIAN LAMERSON both individually and on behalf of LAMERSON BRIAN R. LIVING TRUST; CYNTHIA LEROY both individually and on behalf of LEROY CYNTHIA J TRUST 05/26/2016; LUCY SKELDON both individually and on behalf of LOOMIS PINEWOODS LLC; WILLIAM WILSON both individually and on behalf of LOOMIS PINEWOODS LLC; LOWELL BUTMAN both individually and on behalf of LOWELL AND MILDRED

BUTMAN TRUST; GAIL LYNCH both individually and on behalf of LYNCH, LUNDY AND MARKLAND TRUST; LYNN DUTTON both individually and on behalf of LYNN COOK DUTTON TRUST; MADELINE TOMAK both individually and on behalf of MADELINE TOMAK REV TRUST; MARCUS FOWLER both individually and on behalf of MARCUS P FOWLER ET AL; MARGARET BALESKY both individually and on behalf of MARGARET A BALESKY TRUST; DEBORAH THALNER both individually and on behalf of MARIE E THALNER TRUST; MARK LEWIS both individually and on behalf of MARK A AND PATRICIA J TRUST; MARK YUSCHAK both individually and on behalf of MARK E. YUSCHAK, II AND GINNY M. TOSKEY-YUSCHAK REVOCABLE LIVING TRUST DATED APRIL 22, 2013; MARK HANCOCK both individually and on behalf of MARK H HANCOCK TRUST; LYNDA WIEFERICH both individually and on behalf of MARK J AND LYNDA J GLASGOW WIEFERICH; JEANNE MEIER both individually and on behalf of JANET G. MARQUARDT TRUST; MARTHA DOUGHERTY both individually and on behalf of MARTHA SUE DOUGHERTY; JUDY MARTIN both individually and on behalf of MARTIN JUDITH A. TRUST; SCOT RICHARDS both individually and on behalf of MARTIN RICHARDS IRREVOCABLE TRUST - SCOT RICHARDS SUCCESSOR TRUSTEE; CONSTANCE MCCORMICK both individually and on behalf of MCCORMICK CONSTANCE M TRUST; JULIE MATTHEWS both individually and on behalf of MCCRORY MARY JANE TRUST & MATTHEWS JULIE TRUST; CATHERINE COMSTOCK both individually and on behalf of MCKINLEY ET AL; MICHAEL COVINGTON both individually and on behalf of MICHAEL & MARGARET COVINGTON REV LIV TRUST; MARY MICHAELS both individually and on behalf of MICHAELS MARY K TRUST; MICHELE KIRSCH both individually and on behalf of MICHELE M KIRSCH TRUST; MICHELLE ANGST both individually and on behalf of MICHELLE M. ANGST, TRUSTEE AND HER SUCCESSORS IN TRUST UNDER THE MICHELLE M. ANGST DECLARATION OF TRUST DATED MAY 17, 1994, AS AMENDED, MICHELLE M. ANGST, DONOR.; RANDALL ZACHMAN both individually and on behalf of MORLEY GUDRITZ ZACHMAN COTTAGE TRUST; DAVID MORLEY both individually and on behalf of MORLEY, GUDRITZ, ZACHMAN COTTAGE TRUST; NANCY PERRY both individually and on behalf

of NANCY V PERRY AND LEE EBANKS; BRIAN NELSON both individually and on behalf of NELSON FAMILY 2023 TRUST; NICK SKALSKY both individually and on behalf of NICK/CHRISTINA SKALSKY TRUST; DAN O'KEEFE both individually and on behalf of O'KEEFE FAMILY TRUST; MATTHEW SALESKY both individually and on behalf of PARK 24 INC.; PAUL KLEPPERT both individually and on behalf of PAUL AND ANNE KLEPPERT REVOCABLE LIVING TRUST; ANN ROSE both individually and on behalf of PEGGY M ROSE TRUST; PETER ANDERSON both individually and on behalf of PETER ANDERSON TRUST; HENRY PLETSCHER both individually and on behalf of PLETSCHER FAMILY COTTAGE LLC; RAYMOND BOMYA both individually and on behalf of RAYMOND & DARLENE BOMYA; KAREN RENDELL both individually and on behalf of RENDELL FAMILY TRUST; WAYNE & MARILYN RENDELL both individually and on behalf of RENDELL FAMILY TRUST; CHARLOTTE CASSIDAY both individually and on behalf of RICK A CASSIDAY AND CHARLOTTE A CASSIDAY TRUST; RICK CASSIDAY both individually and on behalf of RICK A CASSIDAY AND CHARLOTTE A CASSIDAY TRUST; STEVE RICKETTS both individually and on behalf of RICKETTS STEVE L & MARY L TRUST; ROBBIE BORKOWSKI both individually and on behalf of ROBBIE J & LORI A BORKOWSKI; ANNIE JOUBRAN both individually and on behalf of ROBERT AND ANNIE JOUBRAN TRUST; ROBERT JOUBRAN both individually and on behalf of ROBERT AND ANNIE JOUBRAN TRUST; ROBERT KAUFMAN both individually and on behalf of ROBERT KAUFMAN; ROBERT ZUZULA both individually and on behalf of ROBERT L. ZUZULA TRUST; ROBERT SCHEPER both individually and on behalf of ROBERT S SCHEPER; ROBERT TAZZIOLIO; RONALD SUTKOWI both individually and on behalf of RONALD E SUTKOWI U/T/A DATED JAN 24 2001; RONALD SWAIN both individually and on behalf of RONALD W SWAIN LIVING TRUST; SALLY VOORHEIS both individually and on behalf of SALLY M VOORHEIS TRUST; VAN SANDSTROM both individually and on behalf of SANDSTROM FAMILY COTTAGE TRUST; NANCY SCHAUER both individually and on behalf of SCHAUER WILLIAMS COMMUNITY PROPERTY TRUST; SCOTT FLOWERDAY both individually and on behalf of SCOTT FLOWERDAY TRUST; GREGORY SEMACK both individually and on

behalf of SEMACK FAMILY TRUST; SUSAN SEMACK both individually and on behalf of SEMACK FAMILY TRUST; PAUL SEPPALA both individually and on behalf of SEPPALA PAUL C TRUST; SHARON MILATZ both individually and on behalf of SHARON L MILATZ TRUST; SHELLEY SCHAFER both individually and on behalf of SHELLEY M SCHAFER; PAUL BENNETT both individually and on behalf of SINCLAIR-BENNET COTTAGE LLC; STANTON DENT both individually and on behalf of STANTON J & SHARON K. DENT TRUST; STEPHEN CROWELL both individually and on behalf of STEPHEN J. CROWELL/MAUREEN L. CROWELL MARITAL TRUST; MARYANN TRUDEAU both individually and on behalf of STEVEN M. & MARYANN K. TRUDEAU REVOCABLE LIVING TRUST; SUSAN PEACOCK both individually and on behalf of SUSAN A. PEACOCK GRANTOR TRUST; FRED SWINEHART both individually and on behalf of SWINEHART LLC; THOMAS HAMMIS both individually and on behalf of T&L HAMMIS TRUST 05/06/2024; JANE FERGUSON both individually and on behalf of TAGGART A L SR COTTAGE LLC; VIRGINIA SPENCER both individually and on behalf of THALNER TRUST; LISA WALTZ both individually and on behalf of THE DIRK AND LISA WALTZ MARITAL TRUST; LISA CARNES both individually and on behalf of THE KOSEK HIGGINS LAKE TRUST; MICAH LESTOCK both individually and on behalf of THE LESTOCK FAMILY TRUST; GREGORY MARTIN both individually and on behalf of THE MARTIN FAMILY TRUST; WILLIAM CORNELL both individually and on behalf of THE WILLIAM AND KAREN CORNELL FAMILY TRUST; THOMAS KACHOREK both individually and on behalf of THOMAS M KACHOREK REVOCABLE LIVING TRUST; THOMAS KEMP both individually and on behalf of THOMAS R. KEMP TRUST; THOMAS ROHRBECK both individually and on behalf of THOMAS ROHRBECK REVOCABLE LIVING TRUST; THOMAS WRIGHT both individually and on behalf of THOMAS/MARGARET WRIGHT TRUST; TIMOTHY PRATER both individually and on behalf of TIMOTHY R. PRATER; TODD NEELIS both individually and on behalf of TODD & LAURA NEELIS; JACK TOWNSEND both individually and on behalf of TOWNSEND FAMILY TRUST; JASON TRAUTZ both individually and on behalf of TRAUTZ REVOCABLE TRUST 01/30/2019; KAREN TRAUTZ both individually and on behalf of TRAUTZ REVOCABLE TRUST

01/30/2019; JOHANNES BUITEWEG both individually and on behalf of TREASURE ISLAND RETREAT LLC; TROY BRYA both individually and on behalf of TROY BRYA AND LORI BRYA TRUST; ANDREW MORLEY both individually and on behalf of JOHN MORLEY FAMILY COTTAGE TRUST; SCOTT WALES both individually and on behalf of WALES FAMILY LLC; SUZANNA WEBER both individually and on behalf of WEBER M DARREN & SUZANNA M TRUST; WENDY LEOPOLD both individually and on behalf of WENDY LEOPOLD; ROBERT ROBART both individually and on behalf of WESTWOOD ASSOCIATION; BARRY WIER both individually and on behalf of WIER BARRY L & RUTH A TRUST; ROBERT WIER both individually and on behalf of WIER ROBERT C & MARY ELLEN TRUST & DONALD WIER & BARRY WIER; KAREN CORNELL both individually and on behalf of WILLIAM AND KAREN CORNELL TRUST; WILLIAM PUTNEY both individually and on behalf of WILLIAM C PUTNEY TRUST; WILLIAM CLARK both individually and on behalf of WILLIAM CLARK AND MICHELLE CLARK REVOCABLE LIVING TRUST AGREEMENT; RICHARD BLAMER both individually and on behalf of WM C AND BERNICE F BLAMER FAMILY TRUST; THOMAS YOST both individually and on behalf of YOST, DONALD S. TRUST; AL CRAWSHAW; AMANDA LATUSZEK; ANTHONY WATTS; ANTONIO PASCARETTA; ARTHUR BRANDT; B CALVIN PHILIPS; BERYL SCHAAR; BRAD BRICKEL; BRAD CORNELL; BRADLEY DEBRUYNE; BRIAN BRANCH; BRIAN COOK; BRIAN KUERBITZ; BRIAN MACKOWSKI; BRINA STIEFELMAYER; BRUCE AND SALLY CORNETT; BRYN WILL; CARL GEUPEL; CATHERINE STEPHENS; CHARLENE CORNELL; CHERYL FRENCH; CHRIS LEMESSURIER; CINDY STEIN; CLEMENS DENKS; CORBY O'LEARY; CRAIG SABLE; CRAIG TROJAN; CURT DEVOE; CYNTHIA PEACOCK; DALE MCDONALD; DAN KNELLER; DANE FARVER; DANIEL RICHARDSON; DARLENE GERSTENBERGER; DARWIN ELDRED; DARYL FERGIN; DAVID AND DIANA DRAKE; DAVID BOUCK; DAVID CAMPBELL; DAVID DECKER; DAVID ELDER JR; DAVID HALL; DAVID KATT; DAVID SIMONE; DAVID ZUKOWSKI; DEBORAH BENNETT; DEBRA ADAMS; DEBRA POWELL; DEBRA S BOLINGER; DENNIS CONNORS; DENNIS DURANDETTO; DENNIS HILL; DIANE KOCH; DJ DECKER; DONALD CHANEY;

DONALD MOORE; DONALD OLDROYD; DONALD WEGENER; DONNA FREDERICK; DONNA GREEN; DONNA HUJSAK; DONNA LAMBERTI; DOROTHY BAKITA; DOUGLAS AND ALISON THEISEN; DOUGLAS GREEN; DOUGLAS KIK; DOUGLAS ROBBINS; DOUGLAS WELTON; DUNCAN LAWRENCE; DUSTIN FERRIER; EDWARD & JEANNE POLAN; ELAINE BEARDSLEE; ELIZABETH MAXIM; ELIZABETH T FITZSIMMONS; ERIK GEUPEL; EUGEN H STIEFELMAYER JR; EVE RYZNAR; FELICITA DEL PUP; FRED KRAUSS; FREDERIC WILLIAM FRITZ; FREDERICK SEELEY; GARY LAMPHIER; GARY WALES; GEOFFREY GEUPEL; GEORGE BROWN; GEORGE MANSOUR; GERALD KOENIGBAUER; GERALD PHILLION; GERALD POWELL; GERARD GROYA; GIANNI DEL PUP; GLENN GELDERBLOOM; GREG WILLIAMS; GREGORY DOUGLAS; HAROLD GROSSBART; HARRY REINHOLD; HERBERT KLOTZ JR; HERBERT WEATHERLY; HOWARD HAWKINS; INGRID VERNIER; JACKY MARTIN; JACQUELINE GARRIDO; JACQUELINE OBRIEN; JAMES D WIGHTMAN; JAMES FIELDS; JAMES FRYE; JAMES JENNETTE; JAMES KAUFMAN; JAMES P AND MELISSA J SEITZ; JAMES SCHLICKER; JAMES SCHLOSSER; JANE HOEY; JANE OXENDER; JANET A OPPEDAL; JASON WOODS; JEFFERY BATES; JEFFREY BARKER; JEFFREY HARMAN; JEREMY HUGHES; JERRY DAWES; JERRY SOUTHLAND; JILLANN KOEBBE; JOAN FALK; JODDY CAREY; JOEY CABELLO; JOHN ALDRICH; JOHN AND PEGGY CURRIE; JOHN BARTA; JOHN BOUDLER; JOHN BURROWS; JOHN GREGORY; JOHN KOEGEL; JOHN PICKLO; JOHN ROY; JOHN SCHAAR; JOHN SCHALK; JOHN TOWNSEND; JOSEPH FRONTERA; JOSEPH HAMPTON; JOYCE CLARK; JOYCE FRONTERA; JUDY BROWN; JULIE ROYALTY; KARL KURZ; KATHLEEN RAY; KATHRYN WEIGEL; KAY GUGALA; KAY LASSILA; KAY PEARCE; KEITH ADDIS; KEITH CARLSON; KENNETH COOK; KENNETH FRECHEN; KEVIN CHAPIN; KEVIN KESSELER; KEVIN KLEINSMITH; KIMBERLEE HENSEL; KIRT CHAPIN; LAURA COVEART; LAURA MCKINLEY; LAWRENCE KRUGER; LEOLA MCDONIEL; LINDA GRAHAM; LISA BURMESTER; LISA HEIDRICH; LOIS TAYLOR; LORETTA HILL; LORI WOODS; LOUIS BAZNER; LOWELL BERRY; LYNN BRAGG; LYNN PAVLAWK;

MARGARET HARRIS; MARIANNE MILLER; MARK ALLEN; MARK BIANCHI; MARK KARNEY; MARK OLSON; MARK PLETKOVIC; MARK ZAK; MARLYN SEELEY; MARTHA BARTA; MARY ALEXANDER; MARY HIGHBERGER; MARY SCHIESSLER; MARY TEBBEN; MATTHEW NESTER; MAUREEN OBRYAN; MICHAEL CALLAHAN; MICHAEL CRECINE; MICHAEL HENTGEN; MICHAEL LASHER; MICHAEL LINDAMOOD; MICHAEL MACIAG; MICHAEL OLKOWSKI; MICHAEL PURKEY; MICHAEL REARDON; MICHAEL RITCHIE; MICHAEL SIMON; MICHELLE KOTHE; MOLLY FETTIG; MOLLY VANCIL; MONICA KNEISLER; MORGAN BOUDLER; NANCY WEBER-BORNSTEIN; NICHOLAS STORNANT; OLIVER JENKS; PATRICIA DENNIS; PATRICIA DOMBROWSKI; PATRICIA FLORKEY; PATRICIA HAIGHT; PATRICK J & SUSAN KINNEY HUFFMAN; PATRICK RICHARDS; PAUL AND SUSAN BLONSHINE; PAUL BODIYA; PETER ROOD; R CRAIG COOLEY; RANDALL BIERLEIN; RANDON HAIGHT; RAYMOND KUSISTO; REBECCA TAGGART; REX GORE; RICHARD ALLEN FLEMING; RICHARD HOLMES; RICHARD VARLESE; ROBERT BECK; ROBERT KOCH; ROBERT L HOFFMAN; ROBERT LARSEN; ROBERT PERRY; ROBERT RYBKA; ROBERT SCOTT; ROGER SPALDING; ROGER WEBSTER; RONALD BRADLEY; RONALD FELDPAUSCH; RONALD PIKE; RORY GNATKOWSKI; ROSALIND SALBENBLATT; ROSE CZECH; RYAN MINTO; RYAN SOWTER; RYAN WEST; SAM M & TAMMY H MIGLIORE; SANDRA HAY; SANDRA ILES; SANDRA K DREPS; SARA ZAK; SARAH HOOVER; SCOTT CLIFFORD; SCOTT MEE; STEPHEN KIDD; STEPHEN PULLING; STEVEN POPP; STEVEN SWIFTNEY; STUART COLIE; SUSAN DEAN; SUSAN GELDERBLOOM; SUSAN WEBER; SUZANN TOAZ; TAMI CALLAHAN; TAMIE NELSON; TERESA FINOS; TERI KLINE; TERRY LEFEVRE; THOMAS BAUER; THOMAS COCHRANE; THOMAS HANKINSON; THOMAS KACHOREK; THOMAS KIZER; THOMAS MELLOR; THOMAS OBRIEN; THOMAS SAMOTIS; THOMAS STEVENSON; THOMAS THOMSON; THOMAS WEINGARTZ; TIMOTHY CZERNEY; TIMOTHY FLICKINGER; TIMOTHY KAVANAGH; TIMOTHY KOPACKA; TIMOTHY MCCARTHY; TINA THOMAS; TOM MULDER; TOMMY ORR; VALERIE DOANE; VALERIE KRUEGER; VALERIE NIERMAN; VICTORIA MCCARTHY; WALDON WAITE; WILL MCKINLEY;

WILLIAM BEUERLE; WILLIAM DEMMER; WILLIAM HOLMES; WILLIAM ISENSTEIN; WILLIAM JONES; WILLIAM KING; WILLIAM KNAUP; WILLIAM MAREK; WILLIAM MILLER; WILLIAM MYERS JR; WILLIAM PEARCE; WILLIAM SHLEY; WILLIAM SHORTT; WILLIAM SMITT; and WILLIAM WICHERS II,
Petitioners/Appellants,

v.

ROSCOMMON COUNTY BOARD OF COMMISSIONERS and CRAWFORD COUNTY BOARD OF COMMISSIONERS,
Respondents/Appellees
_____/

OUTSIDE LEGAL COUNSEL PLC
PHILIP L. ELLISON (P74117)
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FAHEY SCHULTZ BURZYCH RHODES PLC
DANIEL P. BOCK (P71246)
KYLE A. O'MEARA (P83075)
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APPELLANTS' BRIEF IN SUPPORT OF REVERSAL PURSUANT TO MCL 324.30714(4) AND PETITION FOR DECLARATORY RELIEF PURSUANT TO MCR 2.605(A)

ORAL ARGUMENT REQUESTED

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STATEMENT OF JURISDICTION

This Court has jurisdiction to hear and adjudicate this matter pursuant to MCL 324.30714(4). In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted. MCR 2.605(A). Circuit courts have jurisdiction and power to make any order proper to fully effectuate the circuit courts' jurisdiction and judgments. MCL 600.611.

STATEMENT OF QUESTION(S) PRESENTED

I. Whether the Counties of Roscommon and Crawford denied due process by restricting access to the special assessment roll and cost computation to in-person inspection, in a manner not reasonably calculated to inform affected property owners of the nature and basis of the assessment.

II. Whether a special assessment is unlawful where the Counties of Roscommon and Crawford failed to determine, before imposing the assessment, the parcel-specific increase in market value or proportional benefits as required by law.

III. Whether the record establishes that the Counties of Roscommon and Crawford failed to properly identify a defined "project" under Part 307, and therefore lacked any lawful basis to compute costs or impose a special assessment.

IV. Whether an assessment that lacks a definable endpoint and instead funds ongoing administration, justification, and continuation of the assessment itself constitutes an impermissible scheme rather than a lawful project under Part 307.

V. Whether the structure of the special assessment district is arbitrary and disproportionate where it excludes significant beneficiaries while imposing costs on a narrow class of property owners.

VI. Whether the record establishes that no assessed property received a cognizable special benefit sufficient to support a special assessment.

VII. Whether the Counties' approach converts a limited special assessment tool into an open-ended revenue mechanism in violation of constitutional and statutory limits.

VIII. Whether, under Const 1963, art VI, § 28, reversal is required where the Counties of Roscommon and Crawford adopted wrong principles and errors of law, and the record fails to contain the required legal and constitutional elements supporting the imposed special assessment on Higgins Lake property owners as required by law.

INTRODUCTION

Governments have their primary means of funding themselves: taxation. That system comes with political accountability and constitutional limits. E.g. Const 1963, art IX, § 31. In recent years, however, Michigan counties have increasingly turned to a different device – special assessments – not as a narrow tool tied to actual, measurable benefits, but as a means to shift the cost of public projects away from the general tax base and onto a subset of property owners. Special assessments are pecuniary exactions made by a government for a special purpose or local improvement, apportioned according to the benefits received. *In re Petition of Auditor General*, 226 Mich 170, 173-174; 197 NW 552 (1924). The law does not permit that substitution between the two haphazardly.

The United States Supreme Court made the boundary clear more than a century ago in *Norwood v Baker*. "The exaction from the owner of private property of the cost of a public improvement in substantial excess of the special benefits accruing to him is… a taking, under the guise of taxation, of private property for public use without compensation." 172 US 269, 291 (1898). Michigan law follows the same rule: there must be proportionality between the assessment imposed and the benefit received. *Dixon Road Group v. City of Novi*, 426 Mich 390, 401 (1986). Indeed, the measure is concrete – an assessment is lawful only to the extent it does not exceed the increase in the property's market value. *Id.* at 402.

This case presents the straightforward application (and violation) of these principles. The Counties simply imposed the assessment first—and failed to justify it later. Higgins Lake is a public resource. Improvements to it may well be desirable. But the Constitution does not allow the government to finance public improvements by selecting a group of property owners and charging them more than the benefit their property

receives—while others who enjoy the same public resource pay nothing at all. And that is what occurred here.

The Counties did not determine the increase in market value to any parcel before imposing the assessment. They did not establish proportionality. They did not create a record demonstrating that the amount assessed to each property was tied to a measurable, parcel-specific benefit. Instead, they imposed the assessment first and left the constitutional justification unproven. That is not a defect of procedure. It is a failure of constitutional fidelity—and an error of law.

Michigan's Constitution requires courts to set aside governmental action resting on the "adoption of wrong principles." Const 1963, art VI, § 28. Here, the wrong principle is apparent and clear: Roscommon and Crawford Counties treated a special assessment as a revenue tool untethered from proof of benefit coupled with proportional costs. But a special assessment is not a tax in disguise—and cannot be used as one. Here, there is no established record evidence of increases in market value, no demonstration of proportionality, and no evidentiary basis tying the assessments to actual benefits. Because no such determination was made, the assessment cannot stand as enacted. This Court is asked to declare, pursuant to MCR 2.605(A), that a special assessment is lawful only where "the benefits which property will derive" are first "determined by the difference in the market value of the property before and after the making of the improvement." *Dixon*, 426 Mich at 399. That required showing was never made.

Moreover, the Constitution does not permit government to impose the cost of public improvements on private property "irrespective of any peculiar benefits accruing to

the owner." *Norwood*, 172 US at 190. To allow this assessment to stand would be to erase that boundary and allow an illegal exaction. That is unlawful. Full stop.

Nearly 600 appellants—property owners and affected parties—now challenge the Counties' actions in this case before this Court. The caption literally goes on for twelve pages. This massive challenge is ***not*** about whether the Counties complied with the statute under Part 307; it is about whether their actions of imposing this special assessment complied ***with the unique and constitutional rules for special assessments*** (which under *Norwood* and *Dixon* have imposed a serious constitutional flavor). What the Counties ignored in their rush to effectively tax property owners was establishing the required "determination of the increased market value of a piece of property after the improvement" as "necessary in order to determine whether or not the benefits derived from the special assessment are proportional to the cost incurred" to be a proper special assessment. *Dixon*, 426 Mich at 402. When a charge is imposed upon a property owner without tying it to a parcel-specific increase in value, it ceases to be a special assessment altogether and becomes an illegal taxing exaction. The Counties are attempting to exercise the flexibility of taxation while invoking the label of a special assessment—without satisfying the requirements of either. That is precisely what *Norwood* and *Dixon* forbid. This exaction—labeled as an assessment—must be reversed.

BACKGROUND

Higgins Lake is an approximately 10,000-acre freshwater lake containing twenty-one miles of shoreline located in Roscommon and Crawford Counties. In Michigan, the levels of inland lakes are controlled after being first "established" by a circuit court judicial order under NREPA's Part 307, MCL 324.30701 et seq. **Exhibit A**. The statute is "clear and unambiguous: once a [local circuit] court has determined the normal level of an inland

lake, it shall be maintained at that normal level by the responsible authority." *Citizens for Higgins Lake Legal Levels v Roscommon Cnty Bd of Comm'rs*, 341 Mich App 161, 164; 988 NW2d 841 (2022), *lv denied*, 511 Mich 885; 985 NW2d 830 (2023). That responsible authority is known as the "Delegated Authority" of the local county. MCL 324.30701(e).

To help pay for these activities to maintain the normal level at establishment, Michigan law authorizes counties having such inland lakes to impose a specific "special assessment" upon property owners within a defined "special assessment district" or "SAD" for lake-related projects. The process is provided by statute—

> The county board may determine by resolution that the whole or a part of the cost of a project to establish and maintain a normal level for an inland lake shall be defrayed by special assessments against the following that are benefited by the project: privately owned parcels of land, political subdivisions of the state, and state owned lands under the jurisdiction and control of the department.

MCL 324.30711(1). Later, when a "county board determines that a special assessment district is to be established, the [D]elegated [A]uthority shall[1] compute the cost of the project and prepare a special assessment roll." MCL 324.30711(2).

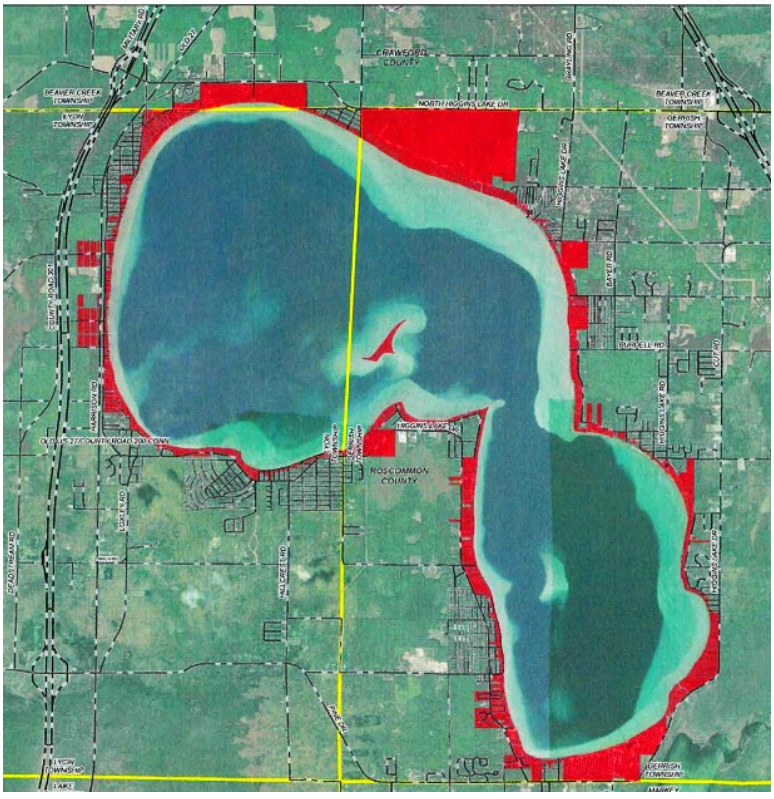
When "comput[ing] [] the cost of a normal level project" required of the Delegated Authority when preparing a special assessment roll, it "shall include the cost of all of the following"—the preliminary study; surveys; establishing a special assessment district, including preparation of assessment rolls and levying assessments; acquiring land and other property; locating, constructing, operating, repairing, and maintaining a dam or works of improvement necessary for maintaining the normal level; legal fees, including estimated costs of appeals if assessments are not upheld; court costs; interest on bonds and other financing costs for the first year, if the project is so financed; and any other

[1] The term "shall" in MCL 324.30711 means the statutory obligation is mandatory, not discretionary. *Costa v Cmty Emergency Med Services, Inc*, 475 Mich 403, 409; 716 NW2d 236 (2006).

costs necessary for the project which can be specifically itemized." MCL 324.30712(1). The delegated authority can also include a contingent expense of "not more than 15% of the sum calculated" under MCL 324.30712(1) to cover unexpected costs. MCL 324.30712(2).

On June 12, 2023, Roscommon and Crawford Counties,[2] by its Delegated Authority for Higgins Lake, filed what they label as a petition to establish a lake level special assessment district and confirm the special assessment district boundaries for Higgins Lake. See **R.000001-000002**. The Petition included a map with red-colored highlights of certain properties, not identified by address, that are being sought to be included within the proposed special assessment district—

PROPOSED SPECIAL ASSESSMENT DISTRICT
HIGGINS LAKE LEGAL LAKE LEVEL
ROSCOMMON COUNTY AND CRAWFORD COUNTY, MICHIGAN



[2] A tiny portion of the north-end of Higgins Lake crosses into Crawford County.

See **R.000004**. At the same time, neither the Counties nor the Delegated Authority has provided in the Petition or even contemplated any "comput[ation of] the cost of the project" or even that there is a defined project to begin with. There have been repeated and loud demands to produce the same and nothing was provided. From Appellants' perspective, the lack of this information prevents all affected property owners, residents, and even the courts from determining whether the Counties' proposal, that was sought to be blessed by this Court, meets the special assessment requirements as explained in *Norwood* and *Dixon* (and their progeny) regarding the legality and proportionality requirements that the law requires in these instances for special assessment districts. These missing components are legally fatal and should have precluded the Counties from ever imposing the assessment they did on the district already created (and is currently being challenged).[3]

The record the Counties compiled reveals what they did—and what they did not do. While they confirmed boundaries, they did not define a project, did not confirm an actual cost, and did not confirm any proportional benefit to each property. Yet the SAD was not based on demonstrated benefit, but merely on geographic proximity. Even at the time of the public hearing, the Counties acknowledged that no finalized costs had been determined and that any "assessment roll" would be confirmed later, at the discretion of the county boards without further notice. Over objections of many at the public hearing, this Court confirmed the SAD's project-less boundaries, which is being challenged currently before the Michigan Supreme Court. Through the assistance of the undersigned counsel, several hundred property owners filed written objections as generally follows:

[3] The maps they included (**R.000004-000006)** demonstrate the breadth of the special assessment district (SAD) but not the proportional benefit.

1. The notice issued by Roscommon County states that "Appearance and protest at the hearing is required to appeal the amount of the proposed special assessment." No such requirement exists within or as part of Part 307 of the Natural Resources and Environmental Protection Act. Such statement is beyond Roscommon County's authority to ever demand and thus is ultra vires.

2. The proposed assessment fails to [be] operated in a manner that is required by Michigan law as outlined by the objections in the current appeal to the Michigan Court of Appeals in the case of In re Higgins Lake, Case No. 367805.

3. The proposed assessment fails to [be] operated in a manner that is required by the Michigan Constitution as outlined by the Michigan Supreme Court in Dixon Road Group v Novi, 426 Mich 390; 395 NW2d 211 (1986).

4. The proposed assessment fails to demonstrate that the costs have been apportioned fairly among all who benefit from Higgins Lake. Michigan law requires that special assessments be levied according to benefits received, not arbitrarily spread across parcels.

5. The Counties have not shown how its chosen apportionment method ensures proportionality. For example, excluding itself except to only $10,000 as well as excluding large classes of public users (such as tens of thousands of state park visitors, boaters, and anglers) while charging only certain riparian or deeded-access parcels forces a narrow group of property owners to subsidize a public benefit enjoyed by the broader public. This violates established precedent that assessments cannot include property which is not benefited, nor exclude property that clearly does benefit.

6. The proposed special assessment district is inequitable because it imposes a public burden on private landowners. The Michigan Supreme Court has long held that government may not "force some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." Here, stabilizing the Higgins Lake level benefits the entire community, state park users, and tourists — not merely the proposed assessed property owners. Yet the Counties' plan shifts the entire cost onto a narrow class, resulting in unjust enrichment of non-assessed users and inequity to the assessed class. For example, Roscommon County and its road commission is functionally the second largest riparian property owner yet has directed that it will not participate in the assessments on its riparian frontage at road ends. Excluding the county-owned and road-commission maintained riparian lands (which accounts for 3.6% of all riparian land) places an unfair, disproportionate, and unlawful burden on private property owner(s) that are being assessed.

7. The mailed notice lists only an "estimated assessment" per parcel, but provides no computation of costs or evidence of proportionality between those costs and actual benefits. Michigan law requires a calculation of increased market value for affected parcels in order to justify a special assessment (Dixon Road Group v Novi, 426 Mich 390 (1986)). No such evidence has been presented. Without a defined project, known costs, or demonstrated benefits, the assessment amount is arbitrary. An undefined assessment

is constitutionally defective because it risks being "akin to the taking of property without due process of law."

8. The record contains no evidence that repairs or improvements to the Higgins Lake control structure are presently needed or would be sufficient in the circumstances. Repeated requests for project plans, engineering reports, or defined costs have gone unanswered. The Counties' approach to this special assessment project seeks to collect money without any defined scope of work, effectively creating a perpetual slush fund rather than addressing a specific, necessary project. A special assessment cannot be imposed unless tied to a definite, necessary improvement from which the assessed properties derive measurable benefit. Proceeding without such a showing is premature, arbitrary, and unlawful.

9. Despite having published many other materials on its website at RoscommonLakeLevels.net, the Counties have restricted access to the proposed special assessment roll and a corresponding computation of costs for the Higgins Lake - Lake Level by only making them "on file" for physical examination at county offices and not generally available for public review online or being sent such materials in written form. Such inactions violate due process by being a hide-the-ball process that is not reasonably calculated to give the proposed assessment payers sufficient notice of proposed special assessment roll and a corresponding computation of cost.

R.000145-001743. Dozens more spoke at the public hearing. **R.002078-002182.** The September 2, 2025 public meeting was convened as a special commissioners' meeting acting as the delegated authority for implementing the lake-level special assessment district. From the outset, the Board made clear that the purpose of the meeting was procedural—to review the special assessment roll and computation of costs—not to revisit the boundaries of the SAD, which had already been determined by the circuit court and was in litigation. The presentation emphasized that the assessment process was ongoing, with final approval to occur later and with additional opportunities for public comment and appeal.

The substance of the September 2 public meeting revealed that the proposed assessment was largely built around administrative, operational, and preparatory costs rather than any clearly defined capital improvement project. The cost structure included items such as administration of the assessment district, attorney fees of Stacy Hissong

and her law firm, public communications, legal proceedings, development of the assessment methodology, and prior and anticipated maintenance-related activities. While a total cost cap of approximately $400,000 was identified, the presentation repeatedly acknowledged that it was not final, that future assessments would be necessary, and that long-term planning for the lake control structure remained unresolved. No project was ever defined.

Public comments ***overwhelmingly*** reflected concern about fairness, lack of defined benefit, and the absence of a clear project. Public comments overwhelmingly reflected opposition, with no non-governmental support expressed.[4] Numerous speakers questioned why a narrow group of property owners were being mandated to fund what they viewed as a broadly shared public benefit, particularly given the heavy recreational use of Higgins Lake by non-residents, state park visitors, and the general public. Others raised concerns about the lack of transparency, the absence of a concrete plan, and the perceived inequity of excluding governmental entities or broader user groups from meaningful contributions.

Several commenters also directly challenged the legality and structure of the assessment itself, noting that no specific project had been defined, no clear cost-benefit relationship had been demonstrated, and no urgency existed to justify immediate imposition of the assessment. One recurring theme was that the process was backwards—establishing the assessment mechanism first while deferring the fundamental questions of project scope, cost, and benefit to a later time. This concern was amplified by references to ongoing litigation and uncertainty about whether the

[4] In fact, Gerrish Township has itself separately appealed. *Gerrish Twp v Roscommon Cnty*, Roscommon County Circuit Court Case No. 2025-727527-AA.

assessment framework would ultimately be upheld.

Overall, the public meeting reveals itself to be a governing body treating the public's concern as a mere unimportant procedural step in implementing an already-directed assessment framework, while the public viewed it as a substantive decision point requiring justification. The tension between those two perspectives—process versus substance—runs throughout the meeting and underscores the central issue: the assessment moved forward despite the absence of a clearly defined project, demonstrable benefit, or broadly accepted funding structure. Hundreds of objectors were simply ignored. The September 2 meeting confirmed that the assessment process would proceed without any firmly-made determination of benefit, cost, or proportionality—the very elements required to make a special assessment lawful.

Following the September 2 public meeting, the two Boards of Commissioners then each adopted the resolution, without notice to the property owners, to impose costs associated with lake-level activities and delegated authority functions and sought merely to reimburse the Counties via a special assessment without a project—

COMPUTATION OF COSTS
HIGGINS LAKE - LAKE LEVEL
ROSCOMMON COUNTY
Costs incurred from January 2023-December 31, 2025

Item	Cost
Operation & Maintenance	$ 47,134.25
Lake Level Control Structure Inspections	$ 1,497.50
Lake Level Monitoring	$ 16,946.00
Establishment of Special Assessment District, Including Appeal	$ 153,966.12
Preparation of Assessment Methodology & Levying Assessments	$ 105,000.00
Administration & Maintenance of Assessment Roll	$ 3,150.00
Website & Public Communications	$ 22,862.58
Notices & Landowner Mailings	$ 23,098.61
Gross Sum of Expenses	$ 373,655.06
Contingent Expenses 7.05%	$ 26,344.94
Total (With Contingency)	$ *400,000.00*
Roscommon County Annual Commitment (2023-2025)	$ 30,000.00
Total Assessed to Special Assessment District	$ 370,000.00

R.002004. Despite not fulfilling the legal requirements for a special assessment, the Boards of Commissioners of Roscommon and Crawford Counties nevertheless voted to impose this first assessment anyway. **R.001966-001967; R.002002-002003**. This appeal was filed thereafter. There is simply no evidence of any parcel-specific increase in market value with proportionally allocated costs—the measure Michigan law requires and the only one it recognizes.

ABOUT SPECIAL ASSESSMENTS AND PART 307

The power to tax is exclusively vested in the Legislature. Const 1963, art IX, § 1. There is a "clear distinction" between what are termed "general taxes" versus "special assessments." *Kadzban v Grandville*, 442 Mich 495, 500; 502 NW2d 299 (1993).[5] "The former are burdens imposed generally upon property owners for governmental purposes *without regard to any special benefit* which will inure to the taxpayer. *Id.* (emphasis added). Special assessments, on the other hand, "are sustained upon the theory that the value of the property in the special assessment district is enhanced by the improvement for which the assessment is made." *Id.* "A special assessment is a levy upon property within a specified district." *Id.*

Against this legal backdrop, Michigan counties (and others) may not freely levy special assessments regardless of the benefit that inures to the assessed property. *Dixon*, 426 Mich at 401-403. To be an appropriate special assessment, "there must be some proportionality between the amount of the special assessment and the benefits derived

[5] There is also a third type of money-raising device—a service fee. This "fee" is "exchanged for a service rendered or a benefit conferred, and some reasonable relationship exists between the amount of the fee and the value of the service or benefit." *Bolt v City of Lansing*, 459 Mich 152, 161; 587 NW2d 264 (1998). A common example is a storm sewer system. A "tax," on the other hand, is designed to raise revenue. *Id.*

therefrom." *Id.* at 401. Without such established proportionality, the special assessment "would be akin to the taking of property without due process of law." *Id.* at 403.

Part 307 follows this normal convention. First, the county board may "take the necessary steps to cause to be determined the normal level of the inland lake" by its own motion or "within 45 days following receipt of a petition to the board of 2/3 of the owners of lands abutting the inland lake." MCL 324.30702(1). Before proceeding, a preliminary study is conducted by a licensed professional engineer, which "shall include all of the following"—

a) the feasibility of a project to establish and maintain a normal level of the inland lake;

b) the expediency of the normal level project;

c) feasible and prudent alternative methods and designs for controlling the normal level;

d) the estimated costs of construction and maintenance of the normal level project;

e) a method of financing initial costs;

f) the necessity of a special assessment district and the tentative boundaries if a district is necessary; [and]

g) other information that the county board resolves is necessary.

MCL 324.30703(1). Then, "[i]f the county board, based on the preliminary study, finds it expedient to have and resolves to have determined and established the normal level of an inland lake, the county board shall direct the prosecuting attorney or other legal counsel of the county to initiate a proceeding by proper petition in the court of that county for determination of the normal level for that inland lake and for establishing a special assessment district if the county board determines by resolution that one is necessary as provided in section 30711." MCL 324.30704(1). Should "[t]he county board [] determine…

the cost of a project to establish and maintain a normal level for an inland lake shall be defrayed by special assessments," it may do ultimately do so "against" those who "are benefit[ing] by the project: privately owned parcels of land, political subdivisions of the state, and state owned lands under the jurisdiction and control of the department." MCL 324.30711(1).

When "the county board determines that a special assessment district is to be established," the first step is that "the delegated authority shall compute the cost of the project and prepare a special assessment roll." MCL 324.30711(1). The statute directs what "the computation of the cost" must include—"the cost of ***all*** of the following: (a) the preliminary study; (b) surveys; (c) establishing a special assessment district, including preparation of assessment rolls and levying assessments; (d) acquiring land and other property; (e) locating, constructing, operating, repairing, and maintaining a dam or works of improvement necessary for maintaining the normal level; (f) legal fees, including estimated costs of appeals if assessments are not upheld; (g) court costs; (h) interest on bonds and other financing costs for the first year, if the project is so financed; [and] (i) any other costs necessary for the project which can be specifically itemized." MCL 324.30712(1). When making this computation, "a cost [of] not more than 15% of the sum calculated" may be added "to cover contingent expenses." MCL 324.30712(2). Usually done at the same time is a "descri[ption] the parcels of land to be assessed, the name of the owner of each parcel, if known, and the dollar amount of the assessment against each parcel." MCL 324.30712(2).

With the calculation in hand, due process must be provided to the affected property owners. *Blades v Genesee Cnty Drain Dist*, 375 Mich 683, 692; 135 NW2d 420 (1965)

(due process requires an opportunity by those affected by a "proposed local improvement" to object that the proposal "would not specially or otherwise benefit properties owned by them and included in the special assessment district"). Thus, "the delegated authority shall set a time and place for a public hearing or hearings *on the project cost and the special assessment roll*" with notice by publication and otherwise provided by statute. MCL 324.30714(2); see also MCL 324.30707(2) (requiring first-class mail three weeks before the date set for the hearing to affected property owners).

At and after the hearing, the Counties must present "some proportionality between the amount of the special assessment and the benefits derived therefrom." *Dixon*, 426 Mich at 401. "A determination of the increased market value of a piece of property after the improvement is necessary in order to determine whether or not the benefits derived from the special assessment are proportional to the cost incurred." *Id.*[6] To be clear, the reviewing circuit court need not fix or rewrite an insufficient proposed special assessment, but must sustain a challenge to an assessment when it is non-conforming to the constitutional and legal obligations for SADs. A proposed special assessment can be "declared invalid when the party challenging the assessment demonstrates that 'there is a substantial or unreasonable disproportionality between the amount assessed and the value which accrues to the land as a result of the improvements." *Id.* at 403.

At bottom, "there can be no justification for any proceeding which charges the land with an assessment greater than the benefits." *German Lutheran Church Soc'y v Mt Clemens*, 179 Mich 35, 40; 146 NW 287 (1914). "It is an essential [element] of a special

[6] The Michigan Supreme Court in *Dixon* has expressly rejected the use of alternative methods of calculating benefits when such does not take into account an increase in the market value of the property assessed. 426 Mich at 398-401.

assessment that the improvement concerned should be of value to the property assessed in reasonable relationship to the assessment...." *St Joseph Twp v Municipal Finance Comm'n*, 351 Mich 524, 533; 88 NW2d 543 (1958). While a "rigid dollar-for-dollar balance between the amount of the special assessment and the amount of the benefit" is not required, the courts "will intervene where there is a substantial or unreasonable disproportionality between the amount assessed and the value which accrues to the land as a result of the improvements." *Dixon*, 426 Mich at 402-403. If there is insufficient proportionality (or other legal infirmity), the challenge before the reviewing circuit court must be denied as sustained.

STANDARD OF REVIEW

Under Const 1963, art VI, § 28, this Court must determine whether the Counties' action is authorized by law and supported by competent, material, and substantial evidence on the whole record. Where the record contains no evidence of a required legal element, there is nothing to which the Court may defer. The action must be set aside.

This Court's review of a special assessment imposed under Part 307 is governed by both statute and the Michigan Constitution. Under MCL 324.30714(4), a party aggrieved by the confirmation of a special assessment may seek judicial review in the circuit court. That review is substantive. *In re Higgins Lake*, No 367805, __ Mich App __; 2025 LX 570092 (Dec 15, 2025) *app for lv pending*. Under Const 1963, art VI, § 28, this Court must determine whether the governmental action is "authorized by law" and whether it rests upon "competent, material, and substantial evidence on the whole record." Where a government adopts the wrong legal principles or fails to fulfill that which required by law, its decision is to be set aside. Whether a special assessment complies with constitutional requirements (including proportionality and the existence of a special

benefit) is a question of law reviewed de novo. *Kadzban*, 442 Mich at 502. Likewise, whether due process has been afforded is reviewed de novo. See *In re Petition of Wayne Co Treasurer for Foreclosure*, 478 Mich 1, 9; 732 NW2d 458 (2007). Critically, a special assessment may be sustained only where there is evidence demonstrating that the amount assessed is proportional to the benefit received, measured by the increase in market value of the assessed property. *Dixon*, 426 Mich at 401-402. It must be justified at the time it is imposed and cannot be justified retroactively. Evidence developed after the fact cannot cure the absence of required material needed at the time of assessment. And the existence of that benefit is not to be presumed; it must be established in the record.

In addition to acting as a court of review, this case has an "actual controversy within its jurisdiction" and this Court "may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." MCR 2.605(A).

Where, as here, the record contains no determination of increased market value, no computation of "project" cost tied to a defined improvement, and no findings or record evidence of proportionality, the Court is not permitted to affirm. The failure is not one of evidentiary weight but of evidentiary absence. Under Const 1963, art VI, § 28, such a failure requires that the assessment be set aside. Here, the Counties did not attempt to satisfy the various constitutional and legal prerequisites for a special assessment. They ignored and failed them. Due process was denied. Cost would be determined later. Benefit would never be evaluated. Proportionality would not be discussed or determined. It is just total abandonment of the legal framework governing special assessments.

ARGUMENT

The Counties did not attempt to satisfy the legal prerequisites for a special assessment. They initially convinced the Courts to postpone them. See *In re Higgins Lake*, 2025 LX 570092. Cost, benefits, and proportionality would be determined later, they promised. That promise was broken. But the law does not permit such overall silence. It now requires required determinations backed with evidence. What occurred here was not an imperfect application of governing law—it was complete defiance. Because the law requires an evidentiary-supported determination of increased market value and shown proportionality (and the current record contains none), the assessment cannot be sustained as a matter of law. The constitutional standard for special assessments do not permit government to impose first and justify later. Because the Counties did exactly that, the current Higgins Lake special assessment cannot stand. Reversal is required.

I. Threshold Issue: Due Process Was Denied Because the Counties Restricted Access to the Assessment Roll and Cost Computation in a Manner Not Reasonably Calculated to Inform Affected Property Owners

Due process is not satisfied by the mere act of providing notice. It requires notice that is reasonably calculated, under all the circumstances, to apprise interested parties of the nature of the proposed action and to afford them a meaningful opportunity to present their objections. *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 314 (1950). That standard governs here. And it demands more than technical compliance. It demands a process that actually works.

In the context of special assessments, that requirement has particular force. Because a special assessment is justified only by the existence of a measurable, proportional benefit to the assessed property, the affected property owner must be given a fair opportunity to know and evaluate whether such benefit exists and whether the

amount imposed exceeds it. Michigan law recognizes this principle directly. Due process requires an opportunity to object that the proposed improvement "would not specially or otherwise benefit properties owned by them and included in the special assessment district." *Blades*, 375 Mich at 692. That opportunity, however, is meaningful only if the property owner has access to the information necessary to make that objection. Here, the Counties denied sufficient access.

The record reflects that the Counties made the proposed special assessment roll and the computation of costs available only for in-person inspection at county offices, while declining to distribute them directly to affected property owners. E.g. **R. 000064.** This restrictive and selective disclosure is not incidental. It reveals a process that made it easy to access generalized information while making it difficult to access the specific information that matters.

The assessment roll and cost computation are not peripheral documents. They are the core of the assessment. They identify the parcels to be assessed, the amount imposed on each parcel, and the costs that purportedly justify that imposition. Under Michigan law, those costs must be computed and itemized as part of the statutory process. MCL 324.30711(2); MCL 324.30712(1). And as explained under *Dixon*, the validity of the assessment turns on whether those costs, as allocated, correspond to the increase in market value of the assessed properties. Without access to the roll and the cost computation, a property owner cannot evaluate, prior to the public meeting, that relationship. Without that evaluation, the right to object is illusory.

The Counties' chosen method of disclosure imposed a practical barrier to reasonable pre-hearing evaluation. Many affected property owners are not full-time

residents of Roscommon or Crawford Counties. Many reside elsewhere in Michigan or out of state. Requiring those individuals to travel to a county office, during limited business hours, to inspect critical documents is not a neutral administrative choice. It is a restriction that materially limits access. It is an intentionally-designed barrier that prevents meaningful participation. Due process does not permit that result.

The constitutional inquiry is not whether the information was theoretically available somewhere, but whether the method of providing it was reasonably calculated to inform those whose property rights were at stake. *Mullane*, 339 US at 314. Where the government knows that affected parties are geographically dispersed and that the relevant information is complex and document-intensive, restricting access to in-person inspection alone is not reasonably calculated to inform. It is reasonably calculated to deter.

That conclusion is reinforced by the nature of the proceedings under Part 307. The statute contemplates that the delegated authority will compute the cost of the project and prepare a special assessment roll, and that a public meeting will be held on both. MCL 324.30711(2); MCL 324.30714(2). The purpose of that hearing is for moment at which property owners may challenge whether their property is benefited and whether the proposed assessment is proportional. *Blades*, 375 Mich at 692. A hearing conducted without ready access to the underlying roll and cost data is not a meaningful hearing. It is an empty one.

The defect is compounded by the broader failures in the record. As set forth above, the Counties did not define a project, did not compute a fixed cost, and did not establish proportionality in the record prior to that public meeting. In that context, the assessment

roll and cost computation become the only available sources from which a property owner might attempt to discern the basis of the assessment. By restricting access to those materials, the Counties did not merely inconvenience property owners—they deprived them of the only practical means of understanding and challenging the exaction imposed upon them.

Courts have long rejected such "hide-the-ball" procedures. See *Jones v Flowers*, 547 US 220, 226 (2006) (when the government knows its notice is ineffective, it must take additional reasonable steps. Due process requires transparency where the government seeks to impose a financial burden on private property. It requires that affected parties be given a fair and realistic opportunity to know what is being done, why it is being done, and how it affects them. It does not permit the government to demand objection to preserve challenges while effectively withholding the information necessary to make that objection intelligible.

Because the Counties restricted access to the very information necessary to evaluate the legality of the assessment, they denied affected property owners a meaningful opportunity to be heard. That denial is not a minor procedural defect. It is a violation of due process. And where due process is denied in the imposition of a special assessment, the assessment cannot stand.

The Constitution demands more than the ***appearance*** of process. It demands its reality. That reality was absent here. Reversal is required.

II. Special Assessments Exist Only at the Constitutional Edge—and Only Acceptable Because They Are Strictly Limited to Measurable, Proportional Benefit

Simply put, a special assessment is not just another general way for government to raise revenue. It is a narrow and carefully confined exception to the ordinary rules of

taxation, tolerated only because it rests on a fundamentally different justification. A general tax is imposed broadly for the support of government and it activities. A special assessment, by contrast, is imposed selectively, on particular parcels of property, and is constitutionally permissible ***only*** when the burden imposed corresponds to a specific, measurable benefit conferred on those parcels and not shared equally by the public at large. They "have been described as a peculiar species of taxation." *Wikman v Novi*, 413 Mich 617, 634; 322 NW2d 103 (1982). State frankly, a special assessment is lawful ***only if*** the government first establishes the elements that justify it, i.e., a defined improvement, a computed cost for that improvement, and a determination that each assessed parcel will, within a "reasonable relationship"[7] to the cost, receive a proportional ***measurable*** benefit—solely measured in Michigan by the increase in market value. *Dixon*, 426 Mich at 401-402. Such are not aspirational; they are prerequisites. Absent them, the exaction cannot be sustained as a special assessment (because it is not one).

This hard line drawn for special assessments is constitution-based. It separates lawful exaction from unlawful confiscation. The US Supreme Court articulated that boundary in *Norwood*, warning that when government extracts from a property owner the cost of a public improvement "in substantial excess of the special benefits accruing to him," the excess is not taxation at all but a taking of private property without compensation, being Fifth Amendment takings and Fourteenth Amendment due process violations. 172 US at 291. Michigan law has likewise adhered to that same principle in *Dixon*, insisting that special assessments are sustained only on the theory that the value of the assessed property is enhanced by the improvement, and only to the extent of that

[7] In *Dixon*, the cost of the improvements was approximately 2.6 times the increase in value of the properties and was held invalid. *Dixon*, 426 Mich at 403.

enhancement. 426 Mich at 401-402. The lack of "reasonable relationship between the two would be akin to the taking of property without due process of law." *Id.* at 403.

The requirements are not merely that some benefit exists in the abstract. It is that the benefit be 1.) measurable, 2.) parcel-specific, and 3.) proportionate to the burden imposed. That is why Michigan law ties the validity of a special assessment to the increase in market value of the property per *Dixon*. Market value is not an arbitrary metric. It is the only ***objective*** measure that captures, in real economic terms, whether the property owner has received something commensurate with what has been taken. Without that tether to measurable benefit, the entire justification for a special assessment collapses. What remains is simply a targeted "tax" imposed on a politically convenient subset of property owners in violation of the Constitution.

Unlike taxes, special assessments are valid only if sufficiently proven under constitutionally-required standards. The Counties have attempted to exercise the flexibility of taxation while invoking the label of a special assessment—without satisfying the requirements of either. This case goes over the constitutional barrier. A special assessment requires the benefit established and reviewed before the burden of an assessment is imposed. The proportionality must be demonstrated before the assessment is authorized. The Constitution does not permit that sequence to run in reverse. When a charge is imposed without tying it to a parcel-specific benefit, it ceases to be a special assessment and becomes an illegal exaction.

III. The Record Confirms the Counties Never Established the Constitutional Prerequisites for a Special Assessment.

If the governing law requires that a special assessment be justified by measurable and proportional benefit, the record submitted by the Counties confirms that no such

justification was ever attempted. This Court, over objection, approved the establishment of and confirmed the boundaries of an open-ended special assessment district at the Counties request. **R. 000001- 000002.** It did not require the Counties to have a defined project or the computation of the cost of any such project. However, the Court of Appeals explained such could be challenged "if and when [the Counties] determine to proceed with levying the special assessment tax against the district." *Higgins Lake*, 2025 LX 570092, at *22. That has happened and the ability to challenge is unquestionably now ripe.

What the Counties' compiled record reveals is nothing more than a process that moved forward in the absence of all the elements that give a special assessment its legal validity and the Counties seemingly acknowledged as much. Even if Michigan law were to accept the Counties' premise that project definition, cost computation, and benefit analysis could be deferred until well after confirmation of the special assessment district—which many argue otherwise and such is currently before the Michigan Supreme Court—the record as it now exists confirms that those legal and constitutional prerequisites ***still have not been satisfied***. What was suggested as forthcoming never materialized. The constitutional prerequisites for a special assessment were never established on this submitted record.

The governing bodies proceeded after boundary confirmation with the same structural defect that infected the initial proceeding: costs were treated as open-ended, benefit was assumed rather than actually demonstrated, and proportionality between the two was never discovered or calculated. The record reflects resolutions authorizing expenditures and expressly contemplating reimbursement through future special

assessments, yet those actions remain untethered to any parcel-specific determination of increased market value. That is fatal.

Michigan law does not permit a special assessment to rest on generalized assumptions of benefit or on the mere existence of a public improvement. The constitutional requirements for valid special assessments are specific and exacting. There must be a determination—grounded in evidence—that each assessed parcel receives a ***measurable*** increase in market value attributable to the improvement, and that the amount imposed does not exceed that increase. *Dixon*, 426 Mich at 402. That determination has never been made.

Worse yet, the defect has not been cured by subsequent administrative activity. The Counties have continued to operate under a model in which the special assessment district functions as a funding mechanism for past activities, rather than as a financing tool for a defined future project with a defined cost that allocated against market increases in the value of the assessed properties around Higgins Lake. The absence of a closed project scope and a fixed cost necessarily precludes any meaningful proportionality analysis. Without a known denominator, there can be no lawful allocation of burden.

Equally problematic is that the record remains devoid of any evidence distinguishing among the properties included within the district based on the degree of benefit received. The same broad boundaries remain in place. The same inclusion-first methodology remains intact. And the same absence of valuation evidence persists. What began as a speculative assumption of benefit has remained just that—speculative. This post-confirmation record does not salvage the assessment. It confirms its invalidity.

What has resulted underscores the constitutional problem raised years ago by the same objecting property owners around Higgins Lake. The Counties were afforded the opportunity they claimed was necessary—to develop costs, to define the project, and to establish proportionality. Yet even with that extra step and time, they have not produced the record evidence that the Constitution require for special assessments. The absence is no longer premature, but now permanent.

In short, this special assessment on Higgins Lake properties cannot be sustained on the theory that justification or benefits might emerge over time. It must be justified now and in fact. And where, as here, the record—both before and after confirmation—contains no determination of increased market value and no demonstration of proportionality, the assessment is unlawful as a matter of law.

The Constitution does not tolerate a "build now, justify later" approach to the imposition of financial burdens on private property. It requires that the justification exist before—and at minimum, by the time—the burden is imposed. That requirement has not been met on this record. For those reasons, the special assessment as structured cannot stand.

IV. The Counties Did Not Identify a "Project" Under Part 307, and Without a Project There Can Be No Special Assessment

Part 307 does not authorize counties to impose special assessments to fund general lake management or the ongoing costs of governance. It authorizes assessments only for a "project"—an identified undertaking to establish or maintain a normal lake level. MCL 324.30711(1). That word matters. A "project" is not a collection of activities. It is a defined improvement with a discernible scope, capable of being costed, evaluated, and assessed proportionally to all those who benefit.

The statute is structured accordingly. Once a district is to be established, the delegated authority "shall compute the cost of the project and prepare a special assessment roll." MCL 324.30711(2). The command is sequential and specific. There must be a project. Its cost must be computed. Only then may those costs be allocated to property owners. The statute does not permit that order to be reversed. But here, it was.

The record does not identify a defined project with a fixed scope. It identifies instead a series of past-incurred expenses—administrative, legal, and preparatory—that are not components of a forthcoming project. They are the ***past*** costs of operating a revenue-raising system without first defining the improvement that is supposed to justify it. The Counties did not begin with a project and compute its cost. They began with costs and proceeded without ever identifying the project to which those costs belong. That distinction is the line between a lawful special assessment and an unauthorized exaction.

Part 307 reinforces that line by tying allowable costs to the existence of a project. The statute permits inclusion of items such as surveys, engineering, construction, and maintenance of works of improvement. MCL 324.30712(1). But those items are not freestanding. They are permissible only as elements of the cost of a defined future undertaking. Without a project, there is no statutory basis to compute cost, and without a computed cost of a project, there is nothing upon which an assessment roll may lawfully be prepared for proportional allocation against a corresponding increase in the market value of a property.

The Counties' approach inverts that framework. Costs were assembled first. The project—if it exists at all—was left undefined. What remains is not a project, but a programmatic scheme: an open-ended effort to manage lake levels over time, funded by

a continuing stream of assessments imposed by the majority votes of five commissioners from Roscommon County and seven from Crawford County against a narrow selected group of property owners when everyone otherwise benefits. Part 307 does not authorize such a program; it only authorizes a "project."

The statute is also expressly forward-looking. It permits an assessment to fund the cost of establishing or maintaining a normal lake level through a defined improvement. It does not authorize the imposition of a special assessment to recover past expenditures or to fund indefinite future administration untethered to a specific project-based undertaking. A special assessment is justified only by a particular improvement and the benefit it confers. Without that project-based anchor, the assessment loses its legal character.

That is what occurred here. The Counties did not identify a project, did not compute the cost of a "project," and did not tie the project's proposed assessment to any defined improvement. They imposed the assessment first and left the foundational determinations for later. That was wrong. Without a project, there can be no lawful computation of cost. Without a computed cost of a project, there can be no lawful assessment. The absence is complete, and it is dispositive.

V. The Assessment Fails Because It Lacks a Definable Endpoint and Impermissibly Funds Its Own Existence

Because Part 307 authorizes a special assessment only for a "project," MCL 324.30711(1), it must have a defined scope and an endpoint at which its costs can be measured and its benefits evaluated. Only with those features can a delegated authority "compute the cost of the project" and prepare a lawful assessment roll. MCL 324.30711(2). Again, the assessment here has none of them.

The record does not identify a discrete improvement with a fixed scope or a completion point. Instead, it reflects an open-ended course of activity: administration of the district, development of methodologies, ongoing communications, and anticipated future lake-level management. Those are not the attributes of a "project." They are the attributes of a continuing funding scheme—one that has no defined endpoint and no final cost capable of a proper computation. Without a defined endpoint, there is no "cost of the project" to compute. Without a computable cost, there can be no apportionment. And without apportionment tied to a defined cost, there can be no determination that any assessment is proportional to any benefit. The statutory sequence collapses because the first step—a "project" capable of completion—does not exist.

The circular nature of the assessment underscores the defect. The costs identified are not the costs of constructing or completing a defined improvement. They are, in substantial part, the costs of administering the district, developing the assessment framework, and continuing the very process that generates additional assessments. In other words, the assessment funds the administration, justification, and continuation of the assessment itself. It is an infinite loop of government funding – the very concept of a never-ending slush fund. That is not what Part 307 authorizes.

A special assessment must be justified by an external improvement that confers a measurable benefit on assessed property. It may not be solely used to finance its own existence. When the exaction funds the mechanism that produces the exaction, the necessary connection between cost and benefit disappears. What remains is a self-perpetuating revenue structure, not a project-based assessment.

The absence of an endpoint and the circularity of the costs are therefore not merely

defects in execution. They are failures of legal category. Without a defined project capable of completion, there is no lawful basis to compute cost, no basis to allocate that cost, and no basis to impose an assessment. The exaction cannot be sustained as a special assessment under Part 307.

VI. The Structure of the District Itself Reveals the Arbitrary and Disproportionate Nature of the Assessment

Even if the absence of all the required proofs were not dispositive—and it is—the structure of the district itself confirms the constitutional violation. The Higgins Lake SAD, as drawn, encompasses a vast array of properties, including many that are not lakefront and that do not receive a direct, parcel-specific benefit from the maintenance of lake levels. At the same time, the public at large—those who use Higgins Lake, who enjoy its waters, and who derive equal or greater benefit from its condition—are not subject to the assessment at all. That disparity is a core problem.

A special assessment is justified only when the assessed property receives a benefit that is distinct from that enjoyed by the general public. *Kadzban*, 442 Mich at 500 (a "special assessment… is a specific levy designed to recover the costs of improvements that confer local and peculiar benefits upon property within a defined area"). Where the benefit is shared broadly, the cost must be borne broadly. To do otherwise is to unlawfully shift a *public* burden onto a *private* subset of payers. *Armstrong v United States*, 364 US 40, 49 (1960) ("private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.").

That is precisely what has occurred here. The Counties have identified a group of

property owners based on location proximity and have imposed upon them the cost of maintaining a public resource that benefits far more than that narrow group. There has been no attempt to calibrate the burden to the benefit. There has been no effort to distinguish between degrees of benefit among the included parcels. There has been no recognition that some included properties may receive no measurable increase in value at all. The result is not proportionality. It is arbitrariness.

Michigan law has long recognized that the inclusion of property in a special assessment district that is not benefited—directly or indirectly—is an abuse of power. *Auditor General*, 226 Mich at 173-174. That mandate is not satisfied by asserting that proximity to a lake is itself a benefit. Benefit, under *Dixon*, must be measured solely via actual increases in market value. It must also be demonstrated and not assumed. It must be proportional, not generalized. Here, it was neither demonstrated nor measured. Here, it was just presumed. And presumption is not good enough.

VII. The Record Establishes That No Assessed Property Received a Cognizable Special Benefit

The Constitution recognizes and requires only a particular kind of benefit—one that is measurable, parcel-specific, and reflected in the market value changes of the property assessed. *Dixon*, 426 Mich at 402. That is the governing standard. And under that standard, the record establishes a stark conclusion: no assessed property has been shown to receive a cognizable special benefit at all by the Counties' assessment.

There is no evidence in this record demonstrating that any parcel within the district experienced, or will experience, an increase in market value attributable to the purported assessment. There are no appraisals. There is no valuation methodology. There is no analysis of before-and-after conditions. There is no attempt to quantify, even

approximately, the economic impact on any individual property. What exists instead is assumption – and that is not enough per *Dixon*.

The Counties proceeded on the incorrect premise that proximity to Higgins Lake, or access to its waters, is itself sufficient to justify the imposition of a special assessment to pay for the creation of the district. But that is not the law. A generalized association with a public resource is not a legally cognizable benefit. If it were, every public improvement could be financed through selective exaction from nearby property owners, regardless of whether their property increased in value. That is precisely the theory rejected by Michigan law.

The record confirms that the only evidence offered by the Counties concerned identifying parcels with "access" to the lake. That is not evidence of benefit. It is evidence of geography. It says nothing about whether the value of those properties has increased, will increase, or could increase as a result of the assessment imposed based on the project undertaken. It provides no basis for determining proportionality. It does not satisfy *Dixon*. It does not even attempt to.

Nor does the breadth of the district support any inference of benefit. The inclusion of large numbers of inland parcels—many removed from direct interaction with the lake—confirms that the Counties did not attempt to tailor the assessment to actual benefit. Instead, they adopted an inclusion-first approach that assumes benefit across a wide swath of properties without ever demonstrating it. That assumption cannot substitute for proof.

Under Michigan law, the absence of evidence of increased market value is not a minor evidentiary gap. It is dispositive. Without such evidence, there is no way to

determine whether the assessment is proportional. Without proportionality, there is no lawful special assessment. And without a lawful assessment, the exaction becomes what *Norwood* forbids: a taking under the guise of taxation.

The record only confirms that, at the time the special assessment was approved and imposed, the only concrete costs identified were those associated with establishing and administering the district itself—namely, delegated authority functions and related administrative activities. No defined capital improvement project existed. No project cost had been computed. No evidence was presented demonstrating that any parcel would receive an increase in market value. In other words, the assessment was not imposed to finance a specific improvement. It was imposed to create the mechanism by which future, undefined activities might later be funded. That is not a special assessment. It is a revenue scheme. Michigan law does not permit property owners to be assessed for the mere existence of a district or the administrative costs of governmental planning. A special assessment must correspond to a present, measurable benefit. Here, there was none established.

Accordingly, this is not a case in which the benefit is small, disputed, or difficult to measure. Administrative costs do not themselves confer a benefit on any property. They facilitate ***government*** action, not private property benefits. Funding them through a special assessment untethered to a defined improvement transforms the assessment into a perpetual revenue mechanism. The law of special assessments do not permit a special assessment to be imposed on the theory that benefit ***might*** exist. It requires that benefit

be ***demonstrated***. Because no such demonstration has been made for any property (as opposed to the government) within the district, the assessment fails in its entirety.[8]

VIII. By Deferring Cost and Benefit Determinations to a Future Stage, the Counties Eliminated Meaningful Due Process

The Counties' operation of the Higgins Lake SAD rests on a simple premise: that any defects in cost, benefit, or proportionality can be addressed later, when an assessment roll is prepared and imposed. That premise is not only incorrect—it is constitutionally untenable. Once the special assessment district is confirmed, the critical decision has already been made. The class of property owners subject to assessment has been fixed. The authority to impose the assessment has been secured. The inclusion of each parcel has been determined. At that point, the question is no longer whether the property may be assessed. It is only ***how much*** will be assessed ***and when***. And that is not the question the Constitution requires to be ***first*** answered.

The Constitution requires that the property owner have an opportunity to challenge the legality of the burden itself—whether the property is properly included in the district and whether the assessment is justified by a proportional benefit. That opportunity must exist before the burden is imposed, not after it has been authorized. By deferring all substantive determinations to this future stage, the Counties ensured that no meaningful challenge could occur at the only moment when it matters. The result is a process that "looks" like due process but functions as its opposite. It provides a hearing, but not one that can affect the outcome because the outcome is fait accompli. It allows objections,

[8] If the Counties' approach is permissible, then any governmental activity touching a public resource could be funded by selectively assessing nearby property owners without defining a project, computing cost, or demonstrating benefit. That is not a limiting principle. It is the absence of one.

but not on the grounds that matter. It preserves form while eliminating any real substance. That is not due process. It is its absence.

IX. The Counties' Approach Converts a Limited Assessment Tool into an Open-Ended Revenue Mechanism

At bottom, what the Counties have created is not a special assessment in the traditional sense. It is something else entirely. By first establishing a district without a defined project, without a defined cost, and without a defined temporal scope, the Counties have created a mechanism through which untold funds may be raised in the future at their discretion, so long as the expenditure can be characterized as merely related to lake-level maintenance. That structure lacks the limiting principles that define a lawful special assessment. It is not tied to a single project. It is not limited to a single cost. It is not confined to a specific period. It does not terminate upon completion of a defined improvement Instead, it persists forever. And because it persists, it functions not as a project-specific assessment but as a continuing source of revenue imposed on a defined class of property owners. That is taxation, not a special assessment.

In short, Michigan law does not permit a special assessment to be used in that manner. The distinction between a special assessment and a general tax depends on the presence of limiting principles, i.e., defined project, cost, benefit, allocation, and proportionality. Remove those limits, and the distinction disappears. It comes an exacting tax that is unconstitutional via *Norcross* and unlawful via *Dixon*. And that is what has impermissibly happened here.

X. Reversal is Required Under Article VI, § 28

Under Const 1963, art VI, § 28, this Court must set aside any action that is either based on an error of law or is not supported by competent, material, and substantial

evidence on the whole record. That standard is not deferential where the record contains no evidence on a required element.[9]

Here, Michigan law requires a determination of increased market value to sustain a special assessment. *Dixon*, 426 Mich at 402. That determination is not optional. It is the legal predicate for the assessment itself. Yet the record contains none. No appraisal evidence. No valuation methodology. No parcel-specific analysis. No testimony quantifying any increase in value. No findings adopting such a determination. The absence is fatal.

Where the law requires evidence of benefit, proper allocation, and proportionality – and the record contains none – the Court is not permitted to defer and must act. Under Article VI, § 28, the failure requires that the assessment be set aside.

CONCLUSION

This case is not complicated. It is foundational. This is not a case of insufficient evidence of benefit, proper cost allocation, and constitutional proportionality. In truth, we have no evidence of any. Michigan law permits special assessments only at the constitutional edge—only where a defined improvement confers a measurable, parcel-specific benefit, and only where the amount imposed is proportional to that benefit. That requirement is substantive, being the very conditions that make an exceptional and narrow assessment lawful.

The Counties never satisfied it with evidence on this record. And there is nothing

[9] The Michigan Constitution also directs that "[i]n the absence of fraud, error of law[,] or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation." Const 1963, art VI, § 28. This provision does not apply because this is an appeal regarding a special assessment, not property tax. But even if that is the standard, the shortcomings explained herein equally constitute errors of law or the Counties' adoption of wrong principles regarding special assessment to warrant correction by this Court.

in this record to support this assessment. Challenges involving special assessments usually turn on competing expert opinions, disputed valuations, or close questions of proportionality. This challenge does not because the record contains no determination of increased market value, no calculation of total project cost, and no findings of proportionality. It is a tax on a group that cannot stand. The constitutional predicates for a valid special assessment are entirely absent. Under Article VI, § 28, that absence is decisive.

The Counties created an assessment district without a project. They imposed an assessment without demonstrating benefit or proving cost proportionality. And even after being afforded time to do so, they still have not compiled any evidence that any parcel received a measurable increase in market value or that any assessment bears a reasonable relationship with any such increase. That is legally fatal.

What is presented is not a special assessment. It is a revenue generation mechanism imposed on a defined group of property owners to fund a public resource enjoyed by many who pay nothing. That is precisely what *Norwood* forbids. It is what *Dixon* and its progeny rejects. Neither the Michigan nor Federal Constitutions tolerate it.

In summary, the Counties did not establish a defined project, did not compute the cost of that project, and did not determine any parcel-specific increase in market value before imposing the assessment. A special assessment is lawful only when it is justified by a measurable increase in market value and is proportional to that benefit, and that rule was never satisfied here. This is not a case of insufficient evidence—it is a case of no evidence of any parcel-specific increase in market value, the only measure Michigan law recognizes. Because a special assessment must be justified at the time it is imposed and

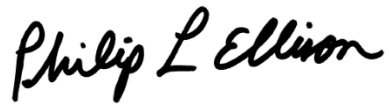
cannot be justified retroactively, the absence of those required determinations is dispositive. Where there is no evidence of increased market value and no showing of proportionality, there is no lawful special assessment, and the imposition of the assessment below should be reversed with the special assessment decision being properly vacated.

RELIEF REQUESTED

WHEREFORE, the Court is requested to vacate the special assessment imposed upon Higgins Lake property owners by the Boards of Commissioners of Roscommon and Crawford Counties and declare, pursuant to MCR 2.605(A), that any Higgins Lake special assessment is lawful only where "the benefits which property will derive" when compared to the costs is "determined by the difference in the market value of the property before and after the making of the improvement" as required by *Norwood* and *Dixon.*

Date: March 30, 2026

RESPECTFULLY SUBMITTED:



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WORD COUNT STATEMENT

The body of brief consists of 10,760 words as determined by the Word Count feature in the Microsoft Word computer program.

EXHIBIT
A
OUTSIDE LEGAL COUNSEL PLC
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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF ROSCOMMON

CITIZENS FOR HIGGINS LAKE LEGAL LEVELS, ERIC OSTERGREN, STEVE RICKETTS, GLENN R. FAUSZ, ROBERT OBRYAN, DRU OBRYAN, THOMAS THOMSON, CAROL THOMSON, and JANICE JAMESON as trustee of the JANICE JAMESON TRUST,
Plaintiffs,

v.

BOARD OF COMMISSIONERS OF THE COUNTY OF ROSCOMMON,
Defendant

Case No.: 19-724711-AW
Hon. Robert W. Bennett

STATE OF MICHIGAN
COUNTY OF ROSCOMMON
34TH CIRCUIT COURT
2021 MAY -7 AM 8:52
MICHELLE M. [illegible]
COUNTY CLERK

DECLARATORY JUDGMENT
AND ORDER DENYING MANDAMUS RELIEF
(WITHOUT PREJUDICE) PENDING TRIAL

PRESENT: Hon. Robert W. Bennett, Circuit Court Judge

Upon the request for entry of a Writ of Mandamus and for the reasons stated on the record, the Court DENIES issuance of such writ (without prejudice) until after trial and instead hereby immediately enters a DECLARATORY JUDGMENT pursuant to Michigan Court Rule 2.605(A).

IT IS HEREBY ORDERED AND ADJUDGED that this Declaratory Judgment issues adopting the opinion of the Michigan Court of Appeals' decision in *Citizens for Higgins Lake Legal Levels v Roscommon Cnty Bd of Comm'rs*, 341 Mich App 161 (2022) (hereinafter "*CHiLLL*") as applying to and regarding Higgins Lake. The Court declares, pursuant to *CHiLLL*, that it is the legal and ministerial duty of Defendant Board of Commissioners of the County of Roscommon ("County") to maintain the water level of Higgins Lake at the level(s) established within the 1982 lake level order as previously issued by this Court **(Exhibit A)** for and during both the summer and winter periods as provided therein. The Court further declares that for Defendant County to deviate from said established level(s) and directives within the 1982 lake level order, a proper legal proceeding to accomplish such must be first undertaken.

This is a not a final order/judgment and does not close the case.

IT IS SO ORDERED.

Date: 5/7/21

Honorable Robert W. Bennett P44282
Circuit Court Judge

True Copy

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF ROSCOMMON

IN THE MATTER OF THE WATER LEVEL OF HOUGHTON LAKE, HIGGINS LAKE AND LAKE ST. HELEN

File No. 81-3003-CF

STATE OF MICHIGAN } ss
County of Roscommon }
FILED THIS 19 DAY OF
Mar. A.D. 19 82
ROBERT W. SMITH
COUNTY CLERK
BY Wilma E. Bass
DEPUTY

ORDER

At a session of said Court held in the Courthouse in the Village of Roscommon, Roscommon County, State of Michigan, on the 24th day of February, 1982.

PRESENT: THE HONORABLE CARL L. HORN
Circuit Judge

This cause having come on to be heard on the Petition to Establish Water Level of Houghton Lake, Higgins Lake and Lake St. Helen, heretofore filed in this cause on behalf of the Roscommon County Board of Commissioners; it appearing that proper notice was given to interested parties; this having heard testimony of behalf of the Michigan Department of Natural Resources and interested persons appearing at the public hearing on said petition; it appearing that the following order will provide the most benefit to the public and best protect the natural resources of the state, and preserve and protect the values of property developed around said lakes; and the Court being fully advised in the premises:

IT IS HEREBY ORDERED AND ADJUDGED that the legal level of Higgins Lake, Roscommon County, Michigan, heretofore established at 1154.11 feet above mean sea level, be continued; provided, however, that said level be lowered to a level not less than 1153.61 feet, commencing on or about November 1 of each year, and restored to its legal level, commencing on or about April 15, or ice-out, which ever shall first occur, in each year.

IT IS FURTHER ORDERED AND ADJUDGED that the legal level of Houghton Lake, Roscommon County, Michigan, heretofore established at 1138.1 feet above mean sea level, be continued; provided, however, that said level be lowered to a level not less than 1137.6 feet, commencing on or about November 1 of each year, and restored to its legal level, commencing on or about April 15, or ice-out, which ever shall first occur, in each year.

IT IS FURTHER ORDERED AND ADJUDGED that the legal level of Lake St. Helen, Roscommon County, Mcihigan, heretofore established at 1154.15 feet above mean sea level, be continued; provided, however, that said level be lowered to a level not less than 1153.65 feet, commencing on or about November 1 of each year, and restored to its legal level, commencing on or about April 15, or ice-out, which ever shall first occur, in each year.

IT IS FURTHER ORDERED AND ADJUDGED that, in adjusting the lake levels as herein provided, the person or persons responsible for such operations shall make every reasonable effort to take into consideration stream flows into the lake and projected snow melt runoff within the water shed, as well as providing a minimum release during refill operations.

Carl L. Horn

CARL L. HORN, Circuit Judge