

## Jackie Mosher

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**From:** Adam Stacey  
**Sent:** Wednesday, September 23, 2020 1:36 PM  
**To:** Jackie Mosher  
**Subject:** Fwd: Senate Finance Cmte - written testimony submission  
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**From:** Chris Hackbarth <chackbarth@mml.org>  
**Date:** September 23, 2020 at 8:30:12 AM EDT  
**To:** Nikole Brown <NBrown@senate.michigan.gov>, Adam Stacey <astacey@senate.michigan.gov>  
**Cc:** Stephanie Simon Morita <smorita@rsjalaw.com>  
**Subject:** Senate Finance Cmte - written testimony submission

With regard to today's Finance committee hearing on SB 39 and the topic of deed restrictions inappropriately impacting highest and best use values for certain commercial properties, please see the attached information from Stephanie Simon Morita, attorney with Rosati, Schultz, Joppich, and Amtsbuechler in Farmington Hills. Stephanie specializes in municipal property tax law and has a primary focus on Michigan Tax Tribunal cases. She recently represented the Municipal League as amicus counsel on the Escanaba v Menards dark stores case and was willing to provide the attached testimony outlining a number of the legal issues that have been argued around the use of deed restricted properties during property tax appeals.

Please feel free to share this information with the Finance committee members and let Stephanie or myself know if you have any questions. Thank you.

Chris

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### **Why Deed Restricted Properties Are Problematic for Purposes of Determining True Cash Value in the Michigan Tax Tribunal**

1. A key concept in valuation is Highest and Best Use. Property is required to be valued according to its Highest and Best Use.
2. Highest and Best Use (HBU) is the reasonably probable and legal use of a property, which is physically possible, appropriately supported, financially feasible, and results in the highest value.
3. Use of deed restricted properties to value non-deed restricted property is problematic because it requires the litigants and Michigan Tax Tribunal (MTT) to ascertain the exact nature and scope of the deed restriction of a sales comparable as compared to the property whose value is being (subject property) appealed for purposes of determining whether the sales comparable with the deed restrictions has the same HBU as the sales comparable.
4. Specifically, while a sales comparable may have the same use as the subject property on the date the sales comparable sells, whether the sales comparable is purchased for the same use, or could be used for the same use, is really an unknown until a later date when the purchaser actually starts utilizing the property. Also, whether the purchaser buys the sales comparable at a discount anticipating the property will require additional investment to convert the property to a use permitted under the deed restrictions, and the actual conversion cost, is not always known at the time an appraiser utilizes a deed restricted property as a sales comparable.
5. This puts the MTT, and the parties, in the position of having to determine whether the: 1) Sales comparable with the deed restrictions can even be used for the same HBU as the subject property and therefore can be considered as a legitimate sales comparable; 2) Deed restriction(s) caused a decrease (and how much of a decrease) in the sales price of the sales comparable because the purchaser anticipated substantial post-purchase expenditures due to the cost to convert the property to another use; and, 3) Overall sales price was affected because the purchaser was not receiving the entire bundle of rights normally conveyed, and could not utilize the property to full extent normally permitted or sell the property later for a use not permitted under the deed restrictions.
6. While the first two determinations can, to some extent, be made and quantified. The third, whether the overall sales price was affected because the purchaser was not receiving the entire bundle of rights normally conveyed, and could not utilize the property to full extent normally permitted, is extremely difficult to quantify and would require a sub-analysis between two like sales comparables, one with the deed restrictions and one without, to determine whether the

price was affected. However, if the sub-analysis can be completed, it begs the question of why the appraiser did not use the non-deed restricted from the outset.

7. *In essence, if an appraiser can complete the necessary sub-analysis which proves that the sales price of a deed restricted property was not affected the by deed restriction, the appraiser should have enough information and sales comparables available to not use the deed restricted sales comparable for purposes of performing an appraisal.*
8. However, and in practice, a full development of the necessary analysis is either just not performed or is too difficult to perform, not just for the appraiser and the litigants, but also the MTT. The ability to research the full circumstances of a sale and extent of deed restrictions can be hampered by time and location, e.g. researching a sale in a county on the other side of the State (or even outside the State) which does not have a readily available means of obtaining deeds electronically may leave a municipality scrambling, or completely unable due to cost, to fact check the title history of sales comparable. And if a litigant cannot do it, the MTT certainly will not have the necessary information to determine whether a deed restricted sales comparable has the same HBU as the subject property.



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Stephanie Simon Morita concentrates her practice in municipal law, local taxation law, and property tax appeal defense. She has extensive trial experience representing municipalities in valuation disputes in the Michigan Tax Tribunal, and has also successfully litigated valuation and tax disputes in Circuit, Probate and Bankruptcy courts. Her representation of clients in property tax and exemption matters has extended to appearances before the State Tax Commission, Federal District Courts, and Appellate Courts in the State of Michigan.

In addition, she has handled over 40 appeals to the Court of Appeals – mostly pertaining to Tax Tribunal matters. Appellate cases in which she has made or changed law include *Menard Inc. v City of Escanaba*, *Danse Corporation v City of Madison Heights*, *Pontiac Country Club v Waterford*, *Detroit Lions v Dearborn*, and *Electronic Data Systems v Flint Twp, Auburn Hills and Troy*.

#### **EDUCATION**

- Wayne State University Law School, J.D., 1995
- University of Michigan, A.B. with Honors, 1992

#### **PROFESSIONAL ACTIVITIES / MEMBERSHIPS**

- State Bar of Michigan  
*Member, 1995-present*  
*Member, Council for the Appellate Practice Section, 2008-present*  
*Secretary, Appellate Practice Section Council, 2011-2013*  
*Treasurer, Appellate Practice Section Council, 2013-present*
- Michigan Municipal League Finance Committee  
*2017-present*

#### **COMMUNITY ACTIVITIES / INVOLVEMENT**

- City of Rochester Hills City Council, 2013-present
- Avondale Youth Assistance Board of Directors, 2013-present
- Paint Creek Trailway Commission Member, 2013-2015
- City of Rochester Hills City Council Vice President, 2015-2019
- City of Rochester Hills Planning Commission, 2015-2019
- Older Person's Commission Board of Directors, 2015-2019
- City of Rochester Hills Museum Foundation Board, 2015-present
- City of Rochester Hills Brownfield Redevelopment Authority, 2007-2015 and 2019-present

#### **PUBLICATIONS / PRESENTATIONS**

- Presenter, Oakland County Association of Township Supervisors, "Dark Store/Big Box/Property Tax," May 2018
- Author, "Escanaba Wins 'Dark Store' Taxation Appeal", March/April 2018 edition of The Review, published by Michigan Municipal League
- Presenter, Great Lakes Chapter of the Appraisal Institute, "Appraising for the Tax Tribunal," February 2018
- Presenter, City of Rochester Hills "Women in Government," February 2018
- Presenter, Rochester Area American Association of University Women, "What it Takes to Lead," October 2015
- Presenter, Oakland County Bar Association Municipal Law Committee, "Hot Topics in Property Tax Law," September 2015
- Co-Author, "What Judges Say About How to Brief That Arcane Appeal (and Practically Everything Else)," Michigan Bar Journal, February 2013
- Presenter, Appellate Practice Section, Seminar on the "Economics of Appellate Practice," May, 2011
- Author, "Free Beer – A Truly Intriguing Tale of Property Taxation and Foreclosure," Laches, published by the Oakland County Bar Association, July 2008

- Presenter, National Business Institute's Seminar on Property Tax Law in Michigan, 2003
- Presenter, Institute for Professionals in Taxation Michigan One-Day Tax Update Seminar, 2003
- Presenter, National Business Institute's Seminar on Property Tax Law in Michigan, 2002
- Author, "Basement Flooding Claims Under Public Act 222 of 2001," Laches, published by the Oakland County Bar Association, November 2002
- Co-Author, "Vacation of Platted Land Dedicated for Public Use," Public Corporation Law Quarterly, December 1999, reprinted with permission in the Michigan Real Property Review, Spring 2000