



TEXAS APARTMENT ASSOCIATION

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April 6, 2022

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

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

To the Honorable Third Court of Appeals:

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

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

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

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

TAA provides exceptional advocacy, education and communication for the Texas rental housing industry

24 LOCAL AFFILIATES ACROSS THE STATE OF TEXAS: ABILENE • AMARILLO • AUSTIN • BEAUMONT • BRYAN • CORPUS CHRISTI • CORSICANA • DALLAS • EL PASO • FORT WORTH • GALVESTON • HARLINGEN
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The Court, by holding that an appraisal district can bring a market value challenge to determine the equal and uniform value, effectively merged the two separate and distinct claims into one. As a result, the opinion all but eliminated the constitutional right of TAA's members to equal and uniform appraisals for taxation purposes by allowing appraisal districts to inject a determination of the property's market value into an equal and uniform challenge. This holding is contrary to established Texas case law recognizing the separate nature of these two types of claims.

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

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

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

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

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

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

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

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

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

Respectfully submitted,

/s/ Sandy Garcia Hoy
Sandy Garcia Hoy
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General Counsel
Texas Apartment Association

Certificate of Service

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

/s/ Sandy G. Hoy
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Status as of 4/6/2022 10:30 AM CST

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