STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Waterford School District,
Petitioner,

MTT Docket No. 392632

v

Tribunal Judge Presiding
Kimbal R. Smith III

Charter Township of West Bloomfield,
Respondent.

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

On May 26, 2010, Petitioner, Waterford School District, filed this appeal contending that the listing for sale of property owned by a general powers school district is not a "private purpose" resulting in Petitioner losing the property tax exemption for the subject parcel under MCL 380.1141. Petitioner further contends that it does not lose its property tax exemption for the subject parcel because of Petitioner's continued use of the subject property for minimal educational purposes under MCL 380.1141. On April 4, 2011, Petitioner filed a Motion for Summary Disposition under MCR 2.116(C)(9) and (C)(10). The issue is whether Petitioner's property is subject to a loss of its property tax exemption. On April 25, 2011,

Respondent filed a response to Petitioner's Motion, alleging that the Motion is completely without merit.

For the reasons set forth herein, the Tribunal finds that granting Petitioner's Motion for Summary Disposition under MCR 2.116(C)(9) and (C)(10) is appropriate. Petitioner's designating as surplus and listing for sale of the property does not constitute a private use of the property under MCL 380.1141, and the minimal educational use of the property is sufficient to constitute use to carry out a public purpose under MCL 211.7m.

PETITIONER'S CONTENTIONS

Petitioner contends that the West Bloomfield Board of Review in March 2010 ignored the issue of whether the property was subject to taxes. Petitioner argues that the Board of Review only ruled on the amount of the assessment, which Petitioner had not contested. Petitioner's Motion, p. 3. Petitioner argues that, in MCL 380.1141(1):

> The property of a school district is exempt from taxation, provisions of other acts to the contrary notwithstanding, except that property owned by the school district that is used for private purposes for more than 2 years is not exempt from taxation as long as the private use continues beyond the 2-year period.

Petitioner contends that the property is used for public purposes because it continues to be used for the limited educational purpose of "research, teaching and archeological digs under a federal history grant of which Carol Egbo, a Waterford

School District employee is the grant director." Petitioner's Motion, Affidavit of William Holbrook. Additionally, Petitioner claims that even if there were no such use, the property would still be exempt from taxation because it is not being used for a private purpose. Petitioner argues that, in MCL 380.11a:

> (3) A general powers school district has all of the rights, powers, and duties expressly stated in this act; may exercise a power implied or incident to a power expressly stated in this act; and, except as provided by law, may exercise a power incidental or appropriate to the performance of a function related to operation of the school district in the interests of public elementary and secondary education in the school district, including, but not limited to, all of the following:
>
> > (c) Acquiring, constructing, maintaining, repairing, renovating, disposing of, or conveying school property, facilities, equipment, technology, or furnishings.

Petitioner further contends that its position is supported by an Attorney General opinion. Op. No. 6512, April 28, 1988. Petitioner states that "in that opinion, the Attorney General was specifically asked if 'unused school property of a school district was exempt from taxation.' Attorney General Kelly answered that question in the affirmative because, although unused, the property was not being used for a private purpose." Petitioner's Motion, p. 5.

Petitioner further contends that proceeds from any sale of the subject property would be for the benefit of the school district, would be used for educational purposes, and would be neither speculative nor an attempt to realize private economic gain. Petitioner's Motion, pp. 5-6.

Petitioner further contends that its case is analogous to *Municipal Employees Retirement Systems of Michigan v Charter Township of Delta*, 266 Mich App 510; 702 NW2d 665 (2005). Petitioner contends that the Michigan Supreme Court held in *Delta Township* that the listing for sale of property by a municipal retirement fund is not a private use and therefore not subject to taxation because the proceeds were ultimately intended for a public use. Petitioner's Motion, p. 6.

Petitioner further contends that its case is analogous to *City of Mt. Pleasant v State Tax Commission*, 477 Mich 50; 729 NW2d 833 (2007). Petitioner contends that the Michigan Supreme Court held that the Legislature's unambiguous language intended to allow the city in this case to list the property for sale without being subject to taxation. Petition contends this is analogous because MCL 380.11(a) unambiguously exempts school districts from ad valorem property taxes so long as the property is not used for a private purpose continuing for a two-year period and that listing the property for sale does not constitute a private purpose. Petitioner's Motion, p. 6.

RESPONDENT'S CONTENTIONS

Respondent contends that the subject property is not tax exempt for the tax years at issue pursuant to MCL 380.1141 or any other statute because, for a period of time in excess of two years, the property has not been used by Petitioner for public purposes or even for private purposes. Respondent states that, because the

property has been listed as surplus property by the School Board and has been listed for sale since 2005, it has necessarily been used by Petitioner for private purposes. Respondent's Answer, p. 2. Respondent states that, according to the pertinent part of MCL 380.1141(2):

> School property not being utilized primarily for public school purposes and from which income is being derived or which is being held out for income purposes at the time of final confirmation of special assessment rolls by the governing body of a city, village, or township shall be liable to the city, village, or township for special assessments attributable to the property. The property shall continue to be liable for the special assessment for a period not longer than 2 years after the property is put to a public school use.

Respondent also states that, in the pertinent part of MCL 211.7m:

> Property owned by, or being acquired pursuant to, an installment purchase agreement by a county, township, city, village, or school district used for public purposes … is exempt from taxation under this act.

Respondent contends that whether a property is being used for private purposes is only determinative of whether it is not being used for public purposes. Respondent alleges this property has not been used for public purposes by the school district since at least 2005 and therefore is not subject to an exemption from real property taxation. Respondent's Answer, pp. 8-10.

Respondent further contends that the property is being held by Petitioner for the speculative purpose of trying to sell the property and realize a profit that would only benefit Petitioner. Respondent states this use does not promote the public

health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within the municipal corporation, in reliance upon *City of Mt. Pleasant*, *supra*.

Respondent further contends that its case is analogous to *Traverse City v Township of East Bay*, 190 Mich 327; 157 NW 85 (1916). The Michigan Court of Appeals, in finding against the land-owning municipality in that case, held that land owned by a government agency and held for pure speculation was not exempt from property taxes. *Traverse City*, *supra*. Respondent contends that Petitioner, like the municipality in *Traverse City*, is acting speculatively by trying to sell the subject property for a large profit. Respondent's Answer, p. 12.

Respondent further contends that its case is analogous to *County of Wayne v City of Romulus*, 7 MTT 334 (1992). Respondent contends that this Tribunal, in finding against the land-owning municipality and removing its property tax exemption, held:

> Even if Petitioner had claimed a valid public purpose was being served by the property, it is unlikely that we would find any public benefit is derived from the County holding large tracts of fallow farm land and denying the public access to that land.

County of Wayne, *supra*.

Respondent further contends that its case is analogous to *County of Wayne v Northville Township,* 8 MTT 560 (1995). Respondent contends that this Tribunal,

in finding against the land-owning municipality and removing its property tax exemption, held that the property, which was primarily vacant and being offered for sale, was not being held or used for a public purpose and therefore was not exempt from property taxation. Respondent's Answer, pp. 13-14.

Respondent also contends that its assessor has not observed the property being used for any purpose since 2005 other than being a vacant parcel of property listed for sale, including for the minimal educational purposes alleged by Petitioner. Respondent contends, based upon distinguishing facts alleged between Petitioner's brief and Respondent's brief, that there are genuine issues of material fact in dispute, which necessitates the Michigan Tax Tribunal to hold a hearing on this matter. Respondent's Answer, pp. 13-14.

Respondent further contends that Petitioner's characterization of the law as held by *City of Mt. Pleasant v State Tax Commission* is misleading and that the case is favorable to Respondent, not Petitioner. Respondent states that the court's holding in *Mt. Pleasant* supports Respondent's position because of a factual scenario distinguishable from the present case. Respondent's Answer, p. 15.

Respondent also disputes Petitioner's characterization of a school district's power to dispose of property under MCL 380.11a(3)(c) as a general description of public use. Respondent contends that this exemplifies a power of school districts and municipalities which is proprietary in nature but that Petitioner's attempt to

derive income from that activity means the activity is not for a public use. Respondent's Answer, p. 17.

FINDINGS OF FACTS

Petitioner Waterford School District is a general powers Michigan School District with its administration office located at 1150 Scott Lake Road, Waterford, Michigan, 48329. Respondent Charter Township of West Bloomfield levies and collects the property taxes on the subject property, which is a 12-acre parcel identified as Parcel No. 18-05-226-002.

Petitioner purchased the parcel in 1966 in anticipation of the need for a new elementary school forecast by potential student growth but never subsequently developed the property. In 2005, after determining that future school development on the parcel was unlikely, Petitioner's Board declared the property surplus and thereafter listed it for sale. The property remains for sale by Petitioner at this time.

General ad valorem taxes were not levied against the subject parcel prior to 2009. In summer 2009, Petitioner received a Summer Tax Statement from Respondent requesting the payment of $10,307.74 in general ad valorem taxes for the subject property, which Petitioner paid on or about August 12, 2009.

Petitioner protested the decision to levy general ad valorem taxes against the subject parcel to the Charter Township of West Bloomfield Board of Review on March 5, 2010. The Board of Review denied Petitioner's protest.

On or about March 25, 2010, Petitioner received a statement of delinquent taxes from the Oakland County Treasurer for $2,976.28, which Petitioner paid on or about March 31, 2010.

On October 4, 2010, this Tribunal dismissed Petitioner's appeal of the 2009 tax year as a result of lack of jurisdiction under MCL 205.735a(6). The Tribunal allowed the case to continue in regard to the 2010 tax year and subsequently granted a Motion to Amend the case to include the 2011 tax year.

In an affidavit attached to its Motion for Summary Disposition, Petitioner states that the property continues to be used "for school purposes, specifically as a site for research, teaching, and archeological digs under a federal history grant of which Carol Egbo, a Waterford School District employee is a grant director."

APPLICABLE LAW

Petitioner moves for summary disposition pursuant to MCR 2.116(C)(9). A motion brought under MCR 2.116(C)(9) seeks a determination of whether the opposing party has failed to state a valid defense to the claim asserted against it. *Nicita v Detroit,* 216 Mich App 746, 750; 550 NW2d 269 (1996). Only the pleadings are considered in a motion under MCR 2.116(C)(9). MCR 2.116(G)(5). "The well-pleaded allegations are accepted as true, and the test is whether the defendant's defenses are so clearly untenable as a matter of law that no factual

development could possibly deny a plaintiff's right to recovery." *Nicita, supra* at 750.

Petitioner also moves for summary disposition pursuant to MCR 2.116(C)(10), which provides the following ground upon which a summary disposition motion may be based: "Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." There is no specific tribunal rule governing motions for summary disposition. As such, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such a motion. TTR 1111(4).

The Michigan Supreme Court, in *Quinto v Cross and Peters Co*, 451 Mich 358; 547 NW2d 314 (1996), provided the following explanation of MCR 2.116(C)(10).

> MCR 2.116 is modeled in part on Rule 56(e) of the Federal Rules of Civil Procedure…[T]he initial burden of production is on the moving party, and the moving party may satisfy the burden in one of two ways.
>
> First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law.

> In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).
>
> In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Id*. at 361-363. (Citations omitted.)

In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied. *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

Section 1141 of the School Code of 1976, hereafter MCL 380.1141, provides:

> (1) The property of a school district is exempt from taxation, provisions of other acts to the contrary notwithstanding, except that property owned by the school district that is used for private purposes for more than 2 years is not exempt from taxation as long as the private use continues beyond the 2-year period.

> (2) School property not being utilized primarily for public school purposes and from which income is being derived or which is being held out for income purposes at the time of final confirmation of special assessment rolls by the governing body of a city, village, or township shall be liable to the city, village, or township for special assessments attributable to the property. The property shall continue to be liable for the special assessment for a period not longer than 2 years after the property is put to a public school use. The board of a school district may enter into an agreement with a county or county agency, city, village, or township to pay special assessments for local improvements levied against school property irrespective of the use to which the property is put.

The Michigan General Property Tax Act, revised and amended in 1980, at MCL 211.7m, provides in pertinent part:

> Property owned by, or being acquired pursuant to, an installment purchase agreement by a county, township, city, village, or school district used for public purposes and property owned or being acquired by an agency, authority, instrumentality, nonprofit corporation, commission, or other separate legal entity comprised solely of, or which is wholly owned by, or whose members consist solely of a political subdivision, a combination of political subdivisions, or a combination of political subdivisions and the state and is used to carry out a public purpose itself or on behalf of a political subdivision or a combination is exempt from taxation under this act.

Section 11a of the Michigan Revised School Code Act of 1976, hereafter MCL 380.11a, provides in pertinent part:

> (3) A general powers school district has all of the rights, powers, and duties expressly stated in this act; and, except as provided by law, may exercise a power incidental or appropriate to the performance of a

> function related to operation of the school district in the interests of public elementary and secondary education in the school district, including, but not limited to, all of the following:
> (c) Acquiring, constructing, maintaining, repairing, renovating, disposing of, or conveying school property, facilities, equipment, technology, or furnishings.

CONCLUSIONS OF LAW

As discussed above, the issue to be resolved by the Tribunal in this matter is whether the property is subject to general ad valorem taxes. The Tribunal has carefully considered Petitioner's Motion under MCR 2.116(C)(9) and (C)(10) and finds that granting Petitioner's Motion under MCR 2.116(C)(9) and (10) is warranted. The Tribunal concludes that the pleadings, affidavits, and documentary evidence prove there is no issue as to whether the parcel was privately used or held out by Petitioner for any private use. The Tribunal further concludes that the parcel was used by Petitioner for minimal educational purposes.

Both the Michigan General Property Tax Act and the School Code of 1976 state that property owned by a school district is exempt from property taxes except when the property is being used for private purposes for a period exceeding two years. Respondent contends that Petitioner's declaration of the property as surplus property and listing the property for sale constitutes speculative, private purposes in that Petitioner is attempting to realize economic gain and/or profit from the property's sale. Respondent's Answer, p. 2. Respondent's answer relies upon

MCL 380.1141(2), contending that the property is being "held out for income purposes" because it is listed for sale. Respondent's contention is that the potential sale of the subject property will result in economic gain for the school district, which would qualify as "private use" under MCL 380.1141(1).

The School Code of 1976 does not define the meanings of "use," "public use," or "private use." The Legislature certainly did not intend such a broad definition of "held out for income purposes" as to include any economic gain a school district might realize from the sale of property if that property was held for education purposes. Under such a broad definition, any income derived by a school district from any use of its property could constitute private use. The Legislature probably envisioned a more narrow definition of what constitutes a property being "held out for income purposes." This code section was probably intended to control arm's-length transactions or leases between school-owned properties and outside organizations such as commercial developers or farmers.

Such an interpretation of MCL 380.1141 is further evidenced by MCL 380.11(a), which grants school districts broad powers in disposing of or conveying school property as long as it is "appropriate to the performance of a function related to the operation of the school district in the interests of public elementary and secondary education in the school district." Respondent correctly notes that the granting of a power to the school district under MCL 380.11(a) does not

automatically mean that the power has a public purpose. But in the present case, Petitioner's evidence shows that the property was originally acquired by the school district for educational purposes, that it continues to be used for minimal educational purposes, that no private or other entities currently or at any time made use of the property, and that, if sold, the proceeds will be used for educational purposes. In light of these facts, Petitioner's possession and attempted sale of the property is sufficiently "appropriate to the performance of a function related to the operation of the school district" under MCL 380.11(a), and any subsequent sale under these circumstances is not an overuse of the district's land conveyance powers resulting in private use.

As a result, this Tribunal finds that a vacant property listed for sale by a school district does not necessarily constitute a private use of that property.

The Tribunal now turns to whether the minimal educational purposes carried out on the subject property constitute use under the School Code of 1976 and/or the Michigan General Property Tax Act. Ownership of the subject property by Petitioner does not necessarily qualify the property for tax exemption. This is well-established state law dating back to the Michigan Supreme Court's decision in *Traverse City*, *supra*. The Court in *Traverse City* held that a city holding acres of undeveloped land without any current or planned future use was not exempt from property taxes on the land because it was not making a present use of that land.

Respondent also cites more recent cases which have continued this ruling, including *County of Wayne v City of Romulus, supra* (in which the Tribunal held that the property must serve some public benefit to qualify as tax-exempt) and *County of Wayne v Northville Township, supra* (in which unused, primarily vacant property offered for sale did not qualify as tax exempt).

These cases are distinguishable from the present action because, in all instances, petitioners in the cited cases admitted no use of the contested parcels or of the portions of the parcels that were deemed not exempt from property taxes. By contrast, Petitioner in this case contends that the property is used for minimal educational purposes, specifically the teaching and study of archeology. Respondent answered Petitioner's Motion by stating that it had no evidence that the property was used in such a manner. In light of Petitioner's position as owner and manager of the property, Petitioner's evidence of whether and how the property is minimally used is vastly superior to Respondent. The nature of the minimal use alleged by Petitioner is of such a type that might go undetected by a county assessor and that is infrequent enough so that there is sporadic but unnoticed activity on the property. Although minimal, this activity as established by Petitioner constitutes use and is for the benefit of the public in that it assists in the educational mission of the school district. Although Petitioner has labeled the property as surplus and intends to dispose of it, Petitioner continues to use the

property for minimal educational purposes. This use is sufficient for property of a school district to continue to be exempt from general ad valorem taxes under MCL 380.1141 and MCL 211.7m.

As a result, this Tribunal finds that minimal educational use of a parcel by a school district is sufficient to constitute use to carry out a public purpose under MCL 211.7m.

For the reasons stated above, the Tribunal grants Summary Disposition in favor of Petitioner under both MCR 2.116(C)(9) and (C)(10).

JUDGMENT

IT IS ORDERED that Petitioner's Motion for Summary Disposition under MCR 2.116(C)(9) and MCR 2.116(C)(10) is GRANTED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's taxable value as finally shown in this Order within 20 days of the entry of the Order. See MCL 205.755.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Order within 90 days of the entry of the Order. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (ii) after December 31, 2006, at the rate of 5.42% for calendar year

2007, (iii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, (iv) after December 31, 2008, at the rate of 3.315% for calendar year 2009, (v) after December 31, 2009, at the rate of 1.23% for calendar year 2010, and (vi) after December 31, 2010 at the rate of 1.12% for calendar year 2011.

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: June 22, 2011 By: Kimbal R. Smith III