

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

Allen Creek Preschool,
Petitioner,

v

MTT Docket No. 409603

City of Ann Arbor,
Respondent.

Tribunal Judge Presiding
B.D. Copping

OPINION AND JUDGMENT

INTRODUCTION

Petitioner Allen Creek Preschool is appealing Respondent City of Ann Arbor’s denial of its claim for exemption from ad valorem property taxation under MCL 211.7o for the 2010, 2011, 2012 and 2013 tax years.¹ A hearing was held in the matter on May 21, 2013. Christine M. Thompson, attorney at Alvin L. Storrs Low-Income Taxpayer Clinic and Albert Sementa, student clinician, appeared on behalf of Petitioner. Kristen D. Larcom, assistant city attorney for the City of Ann Arbor, appeared on behalf of Respondent. Petitioner presented testimony from

¹ Although Petitioner initially claimed exemption under both MCL 211.7o and MCL 211.7n, all subsequent filings, including its motion for summary disposition under MCR 2.116(C)(10), addressed only the former. Notwithstanding, the Tribunal notes that nonprofit preschool and child care centers generally do not “fit into the general scheme of education provided by the state and supported by public taxation,” nor make “a substantial contribution to the relief of the burden of government,” and as such, fail to qualify as eligible educational institutions under applicable statutory and case law. *Association of Little Friends, Inc v City of Escanaba*, 130 Mich App 302; 360 NW2d 602 (1984). See also *Genessee Christian Daycare Services v City of Wyoming*, MTT Docket No. 361657 (2011).

Michelle Graves, head teacher at Allen Creek Preschool and Andrew R. Boschma, Treasurer for the Allen Creek Preschool Board of Directors. Respondent presented testimony from Michael Courtney, deputy assessor for the City of Ann Arbor.

SUMMARY OF JUDGMENT

The property’s true cash value (TCV), state equalized value (SEV), and taxable value (TV) as established by the Board of Review for the tax years at issue are as follows:

Parcel Number: 09-09-19-214-024

Year	TCV	SEV	TV
2010	\$55,400	\$55,400	\$55,400
2011	\$51,800	\$51,800	\$51,800
2012	\$38,800	\$38,800	\$38,800
2013	\$76,800	\$38,400	\$38,400

The property’s TCV, SEV, and TV as determined by the Tribunal for the tax years at issue shall be as follows:

Parcel Number: 09-09-19-214-024

Year	TCV	SEV	TV
2010	\$55,400	\$55,400	EXEMPT
2011	\$51,800	\$51,800	EXEMPT
2012	\$38,800	\$38,800	EXEMPT
2013	\$76,800	\$38,400	EXEMPT

SUMMARY OF PETITIONER’S CASE

Petitioner contends that the subject property is entitled to exemption from ad valorem property taxation under the charitable exemption set forth in MCL 211.7o.

Petitioner contends that it is a nonprofit charitable institution that owns and occupies the subject property solely for the charitable purposes for which it was

incorporated. More specifically, Petitioner contends that it has established a regular, physical presence on the property in accordance with the statute and the Michigan Supreme Court's ruling in *Liberty Hill Housing v City of Livonia*, 480 Mich 44, 54; 746 NW2d 282 (2008), and as such, its request for exemption should be granted. In support of this contention, Petitioner offered the following exhibits, which were admitted into evidence:

- P-1: Stipulation for Entry of Consent Judgment in MTT Docket No. 0337515.
- P-2: Allen Creek Preschool Curriculum
- P-3: IRS Letter of Approval for §501(c)(3) status
- P-4: Allen Creek Preschool Articles of Incorporation
- P-5: Allen Creek Preschool Mission, Philosophy & Values
- P-6: Affidavit of Andrew R. Boschma
- P-7: Various photographs of the subject property
- P-8: Allen Creek Preschool Notes to Calendar Year 2007 Financial Statements
- P-9: Allen Creek Preschool program brochures
- P-10: Allen Creek Preschool Strategic Plan
- P-11: Joint Stipulation of Facts
- P-12: City of Ann Arbor Special Exception Use approval letters
- P-13: Allen Creek Preschool Application for Approval of Special Exception Use
- P-14: City of Ann Arbor Special Exception Use staff report
- P-15: Allen Creek Preschool Parent Permission form

Petitioner also presented testimony from Michelle Graves, head teacher at Allen Creek Preschool and Andrew R. Boschma, Treasurer, Allen Creek Preschool Board of Directors.

Michelle Graves

Ms. Graves testified that she has been employed by Allen Creek Preschool since 2002, and currently serves as its head teacher. (Transcript, pp. 7-8) She

teaches a parent-toddler class two mornings each week and is responsible for supervising all of Allen Creek's teaching staff. (Transcript, p. 8) She further testified that Allen Creek's schoolhouse is located on its Miller Avenue property. (Transcript, p. 8) The school operates Monday through Thursday between the hours of 9:00 am and 1:30 pm, and there are no children present on Fridays. (Transcript, p. 9) Allen Creek runs six different educational programs, including two parent-toddler classes, a three-year-old class, a four-year-old class, a five-year-old class, and an afterschool art enrichment program that meets two afternoons a week. (Transcript, pp. 8-9) All programs connect to the mission of the school and offer activities that are intellectually, physically, socially and emotionally stimulating. (Transcript, p. 15)

Although the original intent was to use the subject building as additional classroom space, it has instead been used to store excess classroom materials, furniture, office equipment and business-related records, including those kept on the children. (Transcript, p. 13, 41) The structure would have required a great deal of effort and reconstruction to bring it up to code, "and so as the years passed, we came up with different ideas for how to use [it], and ultimately . . . built an addition onto the school. So we have the classroom space we need now, and there is no longer the intention to use the Franklin Street house as a site where children will be inside, only to use the space outdoors." (Transcript, p. 42) The Miller Road

property lacks sufficient space for Allen Creek's archives and overflow materials, and the subject property, unlike its rented third-party storage unit, provides the benefit of close-proximity storage at no additional cost to Allen Creek.

(Transcript, pp. 14, 45)

In addition to serving as a pathway for staff to access the adjacent church-owned parking facility, the subject land is used, with parental permission, as an extension of the Miller Road playground area for composting, gardening and other physical activities with the children almost daily. (Transcript, pp. 9-10, 13, 17-18, 22, 24-26, 40-41) The fence separating the two parcels was removed in 2009, and the backyard portions of both are enclosed by chain link and wooden fencing, making them, for all intents and purposes, one continuous lot. (Transcript, pp. 16, 38-39, 47) In relation to the outdoor activities, Ms. Graves explained:

[W]e do a lot of planting with the children. We will start things from seeds inside, and then they will plant them in the gardens on the Franklin Street lot [O]ur playground is very small, and our children are young, and they are physically very active and need a lot of exercise, and we use the Franklin Street property for things that we cannot do on the smaller . . . Miller Avenue [playground] [We] take the children there to play baseball, soccer, volleyball, relay races. There is [also] a chance for them to climb inside of trees, and those are the things that we can't do on the Miller Street property.
(Transcript, pp. 16-17)

The compost box was built by a parent volunteer and is used by Allen Creek students every day school is in session. (Transcript, pp. 17-18) "We serve snack at the school, and we have compost buckets on each table so that the children can

learn the difference between what goes in a trash bin and what can be recycled into the compost [T]hey add to it, and then we use the soil from it in our gardening projects.” (Transcript, p. 18) In the same way that planting provides hands-on life science learning experiences, composting gives the children “a concrete visual understanding of how you can take a seed, turn it into food that you can eat using materials that were waste at one point” (Transcript, pp. 18, 21)

Occasionally, the property is also used for quiet time with the children and as a gathering spot for the families on parent-workdays, a bi-annual event where parents and their children assemble to rake leaves, trim bushes and clean the property. (Transcript pp. 19-20, 24) Ms. Graves did note, however, that “there are some times . . . when the children don’t go on the property because it’s really muddy, and . . . there have been some restrictions on how we have been able to use it, depending on the weather.” (Transcript p. 22)

Andrew R. Boschma

Mr. Boschma testified that he is an accountant for MKM Ventures, LLC and has served as Treasurer of Allen Creek Preschool’s Board of Directors since 2008. He was also a member of its finance committee for two years prior to joining the Board. Mr. Boschma read his sworn affidavit into the record, and in further explanation testified that as an employer, Allen Creek is required to compile and maintain payroll, accounting and other financial records, some of which have to be

retained up to seven years. (Transcript, p. 54) The Miller Road building is largely dedicated to classroom space, and there is only one small room that can be used for storage. (Transcript, p. 55) That room can hold, at most, about two years' worth of records, so off-site storage is necessary. (Transcript, p. 55) The subject building has been used to store such records, as well as excess classroom materials, furniture, and office equipment since the summer of 2009 (sometime between April and August), when the original rehabilitation/redevelopment plan for the property was abandoned. (Transcript, p. 54, 61) Mr. Boschma explained:

[W]e got special exception use for the parcel before we acquired it. We closed January 20, 2009 or thereabouts, and . . . that was done in coordination with the family who lived there. So they left, and you will even see in [the admitted photographs] the walls are stripped of drywall. We went in and started to go ahead and work. We had an inspector from the state licensing and fire department come out and meet with us onsite, and he gave us the list of all the things that would be required in order to have the structure be adequate to have children within that old home. It was roughly probably the May or June Board meeting when we considered the cost involved, the small amount of money we had raised in fundraising thus far and the lack of student demands for the fall '09 school year. We didn't, in fact, need the extra classroom building that fall, so we abandoned the original plan to remediate the building. At that point, it was pretty much converted to storage, focused on grounds use, and . . . we took the garage down at that time as well. (Transcript, pp. 61-62)

In further explanation, Mr. Boschma confirmed that the mesh fencing that separated the Miller Road and Franklin Street parcels was removed at this time. (Transcript, p. 58)

SUMMARY OF RESPONDENT'S CASE

Respondent contends that the subject property is not entitled to exemption from ad valorem property taxation under the charitable exemption set forth in MCL 211.7o. Respondent contends that while Petitioner is a nonprofit charitable institution, it does not occupy the subject property solely for the charitable purposes for which it was incorporated. More specifically, Respondent contends that Petitioner's occasional use of the property does not satisfy the regular physical presence required by MCL 211.7o, as interpreted by the Michigan Supreme Court in *Liberty Hill, supra*. Respondent contends that as such, Petitioner's request for exemption should be denied. In support of this contention, Respondent offered the following exhibits, which were admitted into evidence:

R-1: Joint Stipulation of Facts

R-2: City of Ann Arbor Special Exception Use approval letters

R-3: Allen Creek Preschool Application for Approval of Special Exception Use

R-4: City of Ann Arbor Special Exception Use staff report

R-5: Photograph of the subject property

Respondent also presented testimony from Michael Courtney, deputy assessor for the City of Ann Arbor.

Michael Courtney

Mr. Courtney testified that he has been employed by the City of Ann Arbor since 1999, and currently serves as its deputy assessor. (Transcript, p. 64) Prior to attaining the title of deputy assessor, he served the City in a similar capacity as its

chief appraiser. Mr. Courtney testified that he visited and inspected the subject property several times in the tax years at issue in this appeal. (Transcript, pp. 65-67) During his initial visit in November of 2009, he photographed the property and noted that there was no activity in the building or the outside area. (Transcript, p. 66) Sometime during the winter of 2010, he visited the property a second time, and noted that there was snow on the ground, but no tracks leading to the building. This observation suggested to him that there was still no activity taking place in the residence. (Transcript, p. 66) In February of 2012, he again noted no activity in the structure and also determined that the utilities were off. (Transcript, p. 66) The gas had been disconnected and the meter removed, and upon further investigation, he discovered that the water had been turned off sometime in February of 2011. (Transcript, p. 66-67) On his most recent visit, which occurred just a few days prior to the hearing, he noted that the fencing surrounding the property was in less than desirable condition. And though he again did not witness any human activity, he did observe three cars parked in the driveway. (Transcript, p. 69) Despite a lack of activity during his inspections, Mr. Courtney noted that he had been by the property more than once in his activities with the City between 2009 and 2013, and had observed on at least one occasion children playing in the backyard. (Transcript, pp. 67-68)

FINDINGS OF FACT

On April 9, 2013, the parties entered into an agreement wherein they stipulated to the following facts pertaining to the subject property:

1. A charitable exemption from real property taxes under MCL 211.7o requires the following:
 - a. The real estate must be owned and occupied by the exemption claimant;
 - b. [T]he exemption claimant must be a nonprofit charitable institution; and
 - c. [T]he exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated.

2. For purposes of this case only, it is undisputed that the second prong of the test for a charitable exemption . . . is satisfied and that the property is owned by Petitioner.

* * *

3. Petitioner in the above-captioned matter, Allen Creek Preschool (“ACP”) operates a preschool program.
4. The tax years at issue in this case are 2010, 2011, and 2012.
5. The subject property is located at 1515 Franklin Street, Ann Arbor, Michigan 48103, and is identified as parcel number 09-09-19-214-024. ACP purchased the subject property in 2009.
6. The subject property consists of a single-family house situated on land; it is adjacent to property also owned by ACP, which contains ACP’s preschool building. The subject real property is classified for tax purposes as 401 residential real property.
7. Petitioner has never utilized the building on the subject property as a residence. Petitioner purchased the subject property for use in connection with its existing adjacent preschool facility. The City approved a special exception use of the property as a child care center subject to construction of

a new building as shown on the site plan that the City approved on February 7, 2011. Construction of a new building as not commenced nor has Petitioner applied for building permits to demolish the existing building or to commence construction. Petitioner plans on utilizing the new building for classroom purposes.

8. For the tax years at issue, Respondent assigned the following [state equalized,] assessed and taxable values to the subject property:

Year	SEV	AV	TV
2010	\$55,400	\$55,400	\$55,400
2011	\$51,800	\$51,800	\$51,800
2012	\$38,800	\$38,800	\$38,800

9. For each of the tax years at issued, Petitioner contends that the taxable value of the subject property is \$0.

10. During each of the tax years at issue, Petitioner used the backyard portion of the subject property for students to plant flowers and other forms of vegetation and to construct a compost box at the site. Twice each year, Petitioner hosts an event on the subject property, where preschool students and their parents participate in raking leaves and other activities. The backyard portion of the subject property has also been used as a play area.

11. A consent judgment of exemption under MCL 211.7o for the adjacent property containing ACP’s preschool building was entered by the Michigan Tax Tribunal by stipulation of the parties for tax years 2007 and 2008; see Docket No. 0337515, in June 2009.

In addition to these stipulated facts, the Tribunal finds as follows:

12. The 2013 tax year is included in this proceeding pursuant to MCL 205.737(5)(a).

13. For the 2013 tax year, Respondent assigned the following state equalized, assessed and taxable values to the subject property:

Year	SEV	AV	TV
2013	\$76,800	\$38,400	\$38,400

- 14.ACP began operation in 2002 or earlier.
- 15.The fence between the subject parcel and the main preschool parcel was torn down in 2009, making the parcels one continuous property.
- 16.The play area located on the subject property is completely enclosed by fencing.
- 17.The children use the subject play area as a playground to exercise and develop their major motor activities on a regular basis.
- 18.The play area located adjacent to the main preschool building is too small for children to exercise utilizing large motor movements.
- 19.During a 16-day cycle, approximately one month, each of the four classroom groups of students uses the subject play area an average of four or five times.
- 20.Approximately sixteen to twenty days a year, students do not use the subject play area due to muddy conditions.
- 21.A one-day event with parents of students and instructors is held annually in the spring and fall to clean up the play area on the subject property.
- 22.In addition, students and instructors have planted a flower bed on the subject property, which requires on-going maintenance.
- 23.With the assistance of their instructors, the students also learned how to build and the uses for a compost box on the subject property
- 24.Initially, ACP planned to renovate the existing building located on the subject property. However, in the interim, beginning in 2009, ACP stored furniture, equipment, student records, archived student records and historical financial records in the building on a continuous basis for tax years 2010 through 2013.
- 25.Ultimately, due to the significant renovations required to make the building useable for classroom space and the related expense, ACP made the decision to continue to use the subject building for storage of furniture, equipment and various records and build an addition to the primary preschool building instead.

26. The building on the subject property is not used for anything other than for school-related purposes.

27. As the building on the subject property was only being used for storage, the utilities services to the building were initially not used and ultimately completely disconnected and/or turned off.

APPLICABLE LAW

The General Property Tax Act provides that “all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation.” MCL 211.1. “In general, tax exemption statutes are to be strictly construed in favor of the taxing authority.” *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 664; 378 NW2d 737 (1985); *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 753-754; 298 NW2d 422 (1980). The petitioner must prove, by a preponderance of the evidence, that it is entitled to an exemption. *ProMed Healthcare v Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002).

MCL 211.7o creates a property tax exemption for charitable institutions. It states, in pertinent part, that “[r]eal or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which that nonprofit charitable institution was incorporated is exempt from the collection of taxes under this act.” Pursuant to this statutory language, there are three basic elements that must be satisfied in order to qualify for an exemption under MCL 211.7o:

1. The real property must be owned and occupied by the exemption claimant;
2. The exemption claimant must be a nonprofit charitable institution; and
3. The exemption exists only when the buildings and other property at issue are occupied by the claimant solely for the purposes for which the claimant was incorporated.

The meaning of “charitable institution” is not legislatively defined, and as such, has been developed in case law. In *Retirement Homes v Sylvan Township*, 416 Mich 340; 330 NW2d 682 (1982), the Michigan Supreme Court set forth the following definition of “Charity”:

[A] gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works *or otherwise lessening the burdens of the government*. *Id.* at 348-349 (emphasis in original).

Accordingly, the proper focus in determining an individual organization’s eligibility for a charitable institution exemption is whether the organization’s “activities, taken as a whole, constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons.” *MUCC v Lansing Twp*, 423 Mich 661, 673; 378 NW2d 682 (1985). In *Wexford Medical Group v Cadillac*, 474 Mich 192; 713 NW2d 734 (2006), the Court held that this definition of charity:

...sufficiently encapsulates, without adding language to the statute, what a claimant must show to be granted a tax exemption as a charitable institution...In light of this definition, certain factors come into play when determining whether an institution is a “charitable institution under MCL 211.70 and MCL 211.7n. Among them are the following:

- (1) A “charitable institution” must be a nonprofit institution.
- (2) A “charitable institution” is one that is organized chiefly, if not solely, for charity.
- (3) A “charitable institution” does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a “charitable institution” serves any person who needs the particular type of charity being offered.
- (4) A “charitable institution” brings people’s minds or hearts under the influence of education or religion; relieves people’s bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.
- (5) A “charitable institution” can charge for its services as long as the charges are not more than what is needed for its successful maintenance.
- (6) A “charitable institution” need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a “charitable institution” regardless of how much money it devotes to charitable activities in a particular year. *Id.* at 214-215.

In *Liberty Hill Housing v City of Livonia*, 480 Mich 44; 746 NW2d 282

(2008), the Michigan Supreme Court addressed the issue of what constitutes occupancy under MCL 211.7o. After a thorough analysis and review of prior case law, the High Court rejected the argument that “occupation” should be interpreted

to mean “charitable use,” and determined that the legislature intended a meaning more in line with the dictionary definition “to be a resident or tenant of; dwell in.” Consequently, the Court held that MCL 211.7o requires, at a minimum, “a regular physical presence on the property.” *Id.* at 56-58. In furtherance of this holding, the Court noted the importance of the distinction between the requirements of the first and third statutory elements of MCL 211.7o², and reasoned that in as much as the former “uses the conjunctive term ‘owned and occupied’ ...the Legislature must have intended different meanings....Otherwise, the word ‘occupied’ would be mere surplusage.” *Id.* at 57.

In response to the dissent’s argument that its interpretation was “incongruous with the Legislature’s second use of ‘occupied’ in MCL 211.7o(1),” the Court observed that “a charitable institution may reside on property for charitable purposes, rather than simply dwelling on the property for no reason other than dwelling itself” and cited its decision in *Oakwood Hosp Corp v State Tax Comm*, 374 Mich 524; 132 NW2d 634 (1965) as an example of such circumstances. *Id.* at 60. In further response to the dissent’s argument against its interpretation, the Court reasoned:

Just as inanimate things may not ‘use’ property, they may not ‘reside’

² As noted above, the three basic elements of MCL 211.7o require that (1) the property be owned and occupied by the exemption claimant, (2) the exemption claimant must be a nonprofit charitable institution, and (3) the exemption exists only when the buildings and other property at issue are occupied by the claimant solely for the [charitable] purposes for which the claimant was incorporated.

on property. Charitable institutions, however, are not merely inanimate bodies; they are made up of people. A charitable institution's members, employees, or volunteers may dwell on the property or at least be habitually present on the property, which is consistent with the meaning of “reside.” The dissent contends that a charitable institution may not “reside in” certain property, such as a swimming pool. Although one obviously cannot dwell in a swimming pool, one can maintain a regular physical presence at the pool (e.g., by habitually swimming there) or on the property that contains the pool. Either would generally be sufficient to occupy the property.

Further, while “[i]t is certainly consistent for a charitable institution to use property on which it maintains a regular physical presence[,] [u]se of property is just one part of occupying it. The two terms are not mutually exclusive; ‘use’ is merely narrower than ‘occupy.’” *Id.* at 61.

CONCLUSIONS OF LAW

MCL 211.7o unconditionally exempts from ad valorem property taxation all real and personal property “owned and occupied by a nonprofit charitable institution” so long as it is “occupied . . . solely for the purposes for which that nonprofit charitable institution was incorporated.” *Id.* As noted above, the parties entered into an agreement on April 9, 2013, wherein they stipulated to a number of facts pertaining to the subject property and this case, including that Petitioner is a nonprofit charitable institution within the meaning of MCL 211.7o. The parties likewise stipulated that Petitioner was an owner of the subject property during each of the tax years at issue. Accordingly, the sole questions presented for consideration by this Tribunal are:

1. Whether Petitioner occupied the subject property during each of the tax years at issue; and
2. Whether Petitioner occupied the subject property solely for the purpose for which it was incorporated during each of the tax years at issue.

As noted in the May 15, 2013 Order denying Petitioner's Motion for Summary Disposition under MCR 2.116(C)(10), the pleadings, affidavits, and other documentary evidence provided by Petitioner in support of the Motion persuasively established that it maintained a physical presence on property in each of the tax years at issue in this appeal, both through its storage of equipment and corporate records in the existing building and through its use of the land for a variety of outdoor-related educational activities. The record did not, however, support the habitual presence contended, leaving genuine issue of material fact regarding whether Petitioner occupied the subject property within the meaning of MCL 211.7o, as interpreted by the Michigan Supreme Court in *Liberty Hill, supra*.

Notwithstanding, the testimony provided at the hearing revealed that in addition to serving as a pathway for staff to access the adjacent church-owned parking facility, the subject land is regularly used as an extension of the Miller Road playground area for composting, gardening and other physical activities with the children. Although each of the six different educational programs operates on a different schedule, and outside playtimes do not overlap due to developmental differences, Allen Creek staff and students are present on the property almost

daily. As such, the Tribunal is satisfied that Petitioner's use of the land is habitual and satisfies the "regular physical presence" required to occupy the property.

The Tribunal is further satisfied, despite Respondent's assertions to the contrary, that Petitioner maintained the requisite physical presence in each of the tax years at issue. The testimony of Petitioner's witnesses established that Allen Creek began regularly using the property sometime during the summer of 2009, and although Mr. Courtney noted a lack of activity at the property during each of his several visits, his focus seemed to be on activity within the subject building and not on the grounds. Further, he could not confirm whether his inspections took place during the hours in which Petitioner's staff and students would have been present on the property.

As for whether Petitioner occupied the property solely for the purposes for which it was incorporated, the Tribunal notes that pursuant to its Articles of Incorporation, Allen Creek was organized for the purpose of "own[ing] and operat[ing] a licensed child care center, admission to which will not be denied on the basis of race, color, creed, sex, or national origin." Although the Articles fail to set forth or specifically identify any charitable purpose, "[t]h relevant inquiry is whether the property 'benefit[s] . . . an indefinite number of persons, either by bringing their minds or hearts under the influence of . . . [education or] religion.' This requires a searching examination of the actual nature of the activities

conducted on the land, with an eye toward evaluating the ‘overall nature of the institution, as opposed to its specific activities.’” *Camp Retreats Foundation, Inc v Twp of Marathon*, unpublished opinion per curiam of the Court of Appeals, issued May 15, 2012 (Docket No. 304179). The Court explained:

While the articles bear relevance to whether the use of the property qualifies as charitable, they are not definitive. In *Mich Baptist Homes Dev Co v City of Ann Arbor*, 396 Mich 660, 671; 242 NW2d 749 (1976), the Supreme Court looked beyond a petitioner’s articles of incorporation, which announced ‘benevolent, charitable and general welfare purposes,’ concluding that the facts did not support this characterization. *Id.*

A review of Allen Creek’s Mission Statement, Philosophy, and Core Values reveals that the overall nature of the institution is charitable and that its activities, when taken as a whole, bring people’s minds or hearts under the influence of education. Its central focus is supporting the healthy growth and development of children, and the testimonial and documentary evidence provided establish that the activities conducted on the subject property further its charitable purpose by offering hands-on learning experiences, physical skill development, and social interactions. As for whether the property benefits an indefinite number of persons, the Tribunal notes that “a charity may not restrict its beneficence to a select few. ‘This does not mean, however, that a charity has to serve every single person regardless of the type of charity offered or the type of charity sought. Rather, a charitable institution can exist to serve a particular group or type of person, but the

charitable institution cannot discriminate within that group.’” *Id.* Petitioner offers its charity on a nondiscriminatory basis and the fact that its activities generally benefit only the Allen Creek community of staff, students and parents does not defeat its charitable purpose or occupancy. Accordingly, the Tribunal finds that Petitioner occupied the subject property solely for the purpose for which it was incorporated during each of the tax years at issue.

JUDGMENT

IT IS 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 true cash and taxable values within 20 days of entry of this opinion, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

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 within 28 days of entry of this opinion. 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 FOJ. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09% for calendar year 2012, (iv) after June 30, 2012, and prior to January 1, 2013, at the rate of 4.25%, and (v) after December 31, 2012, and prior to July 1, 2013, at the rate of 4.25%.

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

MICHIGAN TAX TRIBUNAL

By: B.D. Copping

Entered: June 28, 2013