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

New Mount Moriah
Missionary Baptist Church,
Petitioner,

MTT Docket No. 410569

v

City of Pontiac,
Respondent.

Tribunal Judge Presiding
Marcus L. Abood

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

I. INTRODUCTION

This appeal involves a single parcel of property located in the City of Pontiac, Oakland County, Michigan. The property is identified as parcel no. 14-08-353-011 and commonly known as 204 W. New York Avenue. Petitioner filed this appeal with the Tribunal on January 21, 2011, claiming exemption from ad valorem property taxation under MCL 211.7s for the 2008, 2009, and 2010 tax years. The Tribunal dismissed the 2008 tax year from the appeal on February 11, 2011, for lack of subject matter jurisdiction. The appeal continued for the 2009, 2010, and 2011 tax years, and a Show Cause Hearing and Prehearing Conference was held on March 26, 2013. The parties filed Cross-Motions for Summary Disposition on April 8, 2013, and April 9, 2013, respectively. In the Motions,

which were filed pursuant to MCR 2.116(C)(10), the parties assert that there is no genuine issue of material fact as to the exemption status of the subject property for the tax years at issue, and each requests judgment as a matter of law. Respondent filed a response to Petitioner's Motion for Summary Disposition on April 16, 2013, and Petitioner filed a response to Respondent's Motion on May 16, 2013. All said filings were timely pursuant to the April 10, 2013 Prehearing Conference Summary and Scheduling Order.

II. BACKGROUND

The subject property served as Petitioner's primary facility for many years, and all day-to-day operations and church-related activities, including ministry and religious services took place at that location. At some point prior to the tax years at issue in this appeal, Petitioner purchased a second property located at 313 East Walton with the intent to expand the structure on that property to accommodate its growing congregation. Services were held at both locations for a period of time, but by the beginning of 2009, Petitioner had fully transitioned out of the subject property and into the Walton Street Property, and all religious services were being held at the latter. Though the initial intent was to keep the subject property as a secondary location for use by the church and its ministry councils, it was ultimately decided that it would be sold in an effort to help raise revenue to expand

the Walton property. No sale was forthcoming, however, and the property, with no functioning heating or plumbing systems, subsequently fell into a state of disrepair.

III. PETITIONER'S CONTENTIONS

Petitioner contends that the subject property is entitled to exemption from ad valorem property taxation under the houses of public worship exemption set forth in MCL 211.7s. More specifically, Petitioner contends that it is a domestic non-profit and religious organization devoted to spreading the word of Christ through its missionary work and that the subject property was utilized for the sole purpose of promoting its religious services, truths and beliefs, and in teaching those to the community at large. Pursuant to Petitioner's Constitution, one of the Church's primary aims is "to contribute cheerfully and regularly to the support of the ministry, the expense of the Church, the relief of the poor, and the spread of the gospel through all nations." This vision is accomplished, in part, through schools of ministry that serve the community through outreach programs. Though the subject building was not in the best of shape during the tax years at issue, there was no revocation of its certificate of occupancy at any time. Renovations were ongoing, and Petitioner used the subject property on an increasingly regular and continuous basis during the tax years at issue for several of its ministry councils. The property hosted the youth ministry's 2009 Summer Enrichment Program, which featured chapel and Bible studies. Beginning in 2010, it also hosted

outreach ministry meetings and served as the production site for "Pocket Parables," a faith-based series of videos directed toward children and young adults. Various other ministries began meeting at the property during the summer of 2011, including the youth ministry, which held weekly Bible Study classes and a vacation Bible school boot camp. A new member orientation was also held at the property, and a communion service was scheduled for late 2011. During all three years, it housed the Helping Hands Food and Clothes Closet. The Helping Hands Ministry operated regularly through the year on Wednesdays and Saturdays, with approximately 22 people on hand to organize donations and distribute food and clothes to people in need. Helping Hands distributees were invited to church services and referred to the evangelist team for follow-up. They were also offered prayers and an opportunity to discuss the gospel. Accordingly, the property was used "in a manner consistent with the purposes of the owning intuition," as required by *Institute in Basic Life Principles, Inc v City of Watersmeet Township*, 217 Mich App 7,19; 551 NW2d 199 (1996). Petitioner contends that as such, it should be granted judgment as a matter of law.

IV. RESPONDENT'S CONTENTIONS

Respondent contends that the subject property is not entitled to exemption from ad valorem property taxation under the houses of public worship exemption set forth in MCL 211.7s. Respondent does not dispute that Petitioner is a nonprofit

religious institution or that it is the owner of the subject property. Respondent contends, however, that a property must actually be used for religious worship or teaching to enjoy exemption; mere possession or ownership is not sufficient. No evidence has been provided to establish that any religious services took place at the subject property during the tax years at issue, and its predominant use in those years was non-use. The property did not have functioning heating or plumbing systems, and for all intents and purposes, was not in a position to be lawfully occupied. To the extent that there was a regular use, such use was very limited in terms of function, time, and space and had no religious component by way of worship or education sufficient to establish predominant use for religious services or teaching religious truths and beliefs. The Summer Enrichment Program had a duration of only six weeks, and the activities were primarily non-religious. Further, there is no concrete evidence that this program took place at the subject property in each of the three tax years at issue in this appeal. Those who offered testimony along those lines were not directly involved with the program, but merely spoke to their impressions. The documentary evidence establishes only that the program took place in one year, and it is unclear which. The Helping Hands Food and Clothes Closet was staffed only on Saturdays, and staffing was limited or non-existent in winter months due to lack of running water and heat. Moreover, Petitioner has offered no authority to support a finding that a charitable

activity operated by a church constitutes religious services or teaching. Religious truths are very broad, extending from actual theological doctrine to notions of morality, but that does not mean that everything a religious person does is teaching religious truths by example. If such had been the intent of the Legislature, it could simply have crafted an exemption stating that all property owned by religious institutions are exempt regardless of use. Respondent contends that as such, it should be granted judgment as a matter of law.

V. APPLICABLE LAW

A. Motions for Summary Disposition under MCR 2.116(C)(10).

MCR 2.116(C)(10) provides for summary disposition when, "[e]xcept 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." *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), the Michigan Supreme Court set forth the following standards for reviewing motions for summary disposition brought under this subsection:

> In reviewing a motion for summary disposition under MCR 2.116(C)(10), the trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action 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 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. *See Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id*. 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. *See McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *See McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993). 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. *See Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

B. Houses of Public Worship Exemption under MCL 211.7s

The General Property Tax Act provides that "all property . . . within the jurisdiction of this state, not expressly exempted, shall be subject to taxation."

MCL 211.1. Exemption statutes are subject to a rule of strict construction in favor of the taxing authority. *See 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. *See ProMed Healthcare v Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002).

MCL 211.7s creates a property tax exemption for houses of public worship. It provides, as follows:

> Houses of public worship, with the land on which they stand, the furniture therein and all rights in the pews, and any parsonage owned by a religious society of this state and occupied as a parsonage are exempt from taxation under this act. Houses of public worship includes buildings or other facilities owned by a religious society and used predominantly for religious services or for teaching the religious truths and beliefs of the society. *Id.*

VI. CONCLUSIONS OF LAW

MCL 211.7s unconditionally exempts from ad valorem property taxation all buildings and facilities owned by a religious society, so long as they are "used predominantly for religious services or for teaching the religious truths and beliefs of the society." *Id*. The Michigan Court of Appeals has held that a present use, and not a future intended use, is a necessary prerequisite to exemption under this statute. *See St Paul Lutheran Church v Riverview*, 165 Mich App 155, 161; 418 NW2d 412 (1987). The Court has also held, however, that the frequency and

quantum of that present use is irrelevant. *See Institute in Basic Life Principles, Inc supra*. After a thorough analysis and review of prior case law, the Court concluded:

> Although the cases rejecting the quantum of use test involve educational institutions rather than houses of public worship, their reasoning applies here. We decline to invite the Tax Tribunal to apply the rigorous quantum of use test, finding that the test would unnecessarily intrude into the affairs of religious organizations. Rather, we adopt the criteria employed in *Nat'l Music Camp* and *McCormick Foundation* and ask whether the entire property was used in a manner consistent with the purposes of the owning institution. This test avoids undue entanglement in the province of religious entities, and more closely conforms with the requirement under the exemption statute that the property be used predominantly for teaching the religious truths of the society. *Id*.[1]

Respondent acknowledges the Court's denunciation of the "quantum of use" test, which was first set forth more than forty years ago in *Lake Louise Christian Community v Hudson Twp*, 10 Mich App 573; 159 NW2d 849 (1968), yet premises its entire "non-use" argument on this rejected theory. Respondent does not dispute actual physical use of the property, but asserts, in essence, that the extent of that use is so de minimis as to render it non-existent. Though the Tribunal agrees that

[1] The validity of *Nat'l Music Camp v Green Lake Twp*, 76 Mich App 608; 257 NW2d 188 (1977), and *Kalamazoo Nature Center, Inc v Cooper Twp*, 104 Mich App 657; 305 NW2d 283 (1981), was called into doubt by the Michigan Supreme Court in *Liberty Hill Housing Corp v Livonia*, 480 Mich 44, 54; 746 NW2d 282 (2008). The Court in that case addressed the issue of what constitutes occupancy under MCL 211.7o. *Institute in Basic Life Principles, supra*, was not called into doubt, however, and unlike MCL 211.7s, which requires that property be owned by a religious society and used predominantly for religious services or for teaching the religious truths and beliefs of the society, MCL 211.7o requires that the property be owned and occupied by the exemption claimant solely for the purposes for which the claimant was incorporated.

this argument is simply an attempt to boot-strap the quantum of use test back into existence as Petitioner contends, it also finds that Petitioner's reliance on *Institute in Basic Life Principles, supra,* is nonetheless misplaced.

Contrary to Petitioner's suggestion, the Court of Appeals' ruling in *Institute in Basic Life Principles* did not abolish the statutory requirement that property be used for religious services or to further the teaching of religious principles. In evaluating the sufficiency of the property owner's use of the property, the Court did hold that the relevant inquiry is "whether the entire property was used in a manner consistent with the purposes of the owning institution." *Institute in Basic Life Principles, supra* at 19. At issue in that case, however, and in all of the cases from which the underlying reasoning was adopted, were parcels with substantial acreage, most of which were undeveloped, and only some of which were physically occupied or used. The Court noted the Institute's use of the lodge and conference center for religious seminars and worship services and made a specific finding that the property was used for religious purposes within the meaning of the statute. *Id*. at 17. The question presented was whether, in light of that finding, the exemption should extend to the entire property, including the undeveloped portions where no such activities took place. *Id*. at 19.

Accordingly, Petitioner is still required to prove, by a preponderance of the evidence, that the subject property was used predominantly for religious services

or for the teaching of religious truths and beliefs. This determination is supported by *Self Realization Meditation Healing Centre v Bath Township*, unpublished opinion per curiam of the Court of Appeals, issued June 21, 2011 (Docket No. 297475), p 12, wherein the Court held as follows:

> [T]he language of the statute exempts the houses of public worship *and* the underlying land, ***though the definition of such houses requires that the house be used predominantly for religious services.*** The unambiguous language of the statute controls, though a quantum of use test does not exist. A two-prong test is used: whether the predominant purpose and practice include teaching religious truths and beliefs; and, whether the entire property was used in a manner consistent with the purposes of the owning institution. (Emphasis added.)

Petitioner's reliance on *Christian Reformed Church in North America v Grand Rapids*, 104 Mich App 10; 303 NW2d 913 (1981), is similarly misplaced. Petitioner cites this case for the proposition that its use of the subject property for administrative ministry and member meetings and publishing of religious videos will render exemption proper pursuant to MCL 211.7s, where there is no secular or commercial purpose for the activities. However, while the petitioner in that case was a nonprofit religious institution, *Christian Reformed Church* was decided under MCL 211.7d, a precursor to the current educational and charitable institution exemption statutes, which at that time provided exemption for "[r]eal estate or personal property . . . owned and occupied by nonprofit theater, library, benevolent, charitable, educational, or scientific institutions . . . while occupied by

them solely for the purposes for which the institutions were incorporated . . .”[2] The primary issue was whether the petitioner was a “charitable” or “benevolent” institution within the meaning of the statute, and the holding cited and relied upon by Petitioner related to the secondary issue of whether the petitioner occupied the property solely for the purpose for which it was incorporated. This issue is not relevant to a determination under MCL 211.7s, as the same does not mandate occupancy as other exemption statutes do, but instead requires that the property be used predominantly for religious services or for teaching religious truths and beliefs. Further, though it was used primarily for administrative purposes, the record in that case established that the subject building was also regularly used for worship services, training assemblies, and other religious-oriented instruction:

> [M]embers of the administrative and support staffs, . . . visitors to staff, and groups or individuals who come into the facility for religious services, training assemblies or other religious-oriented instruction are . . . routinely involved in worship services as a prelude to their other denominational activities. Included on staff are 18 ministers, any of whom may conduct the various services. . . . [T]he various worship services are open to the general public as are the religious-oriented meetings which bring people from many places for training education, including recruits for the Church's mission programs, who undergo orientation on the premises; and for assisting

[2] As amended, MCL 211.7n currently provides exemption for “[r]eal estate or personal property owned and occupied by nonprofit theater, library, educational, or scientific institutions . . . while occupied by them solely for the purposes for which the institutions were incorporated . . . .” MCL 211.7o similarly provides exemption for “[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 . . . .”

> persons in carrying on Church-sponsored evangelism, teaching and benevolence missions, even in the participants' local communities. As gatherings are held at the building it is "with prayer, with scripture reading and for inspiration and assistance in doing the work of Christ", as the witness testified. Some agencies housed in subject building hold a period of worship and prayer on a daily and/or weekly basis. A time of worship for the entire staff is set aside monthly and also for frequent special occasions. *Christian Reformed Church, supra* at 14.

In contrast, the record in the instant appeal does not support a conclusion that any religious services were held at the subject property during the tax years at issue. The depositions of the witnesses did contemplate a single service scheduled to take place in October of 2011, but as noted by Respondent, no evidence has been submitted to establish that the service actually took place. Petitioner does not argue that the property was used for any such services in either of the remaining tax years, and thus, the sole basis under which the property could qualify for an exemption would be a predominant use for teaching religious truths and beliefs.

The Tribunal is satisfied that teaching religious truths and beliefs is one of Petitioner's primary purposes. It appears, however, that the majority of the teaching takes place at Petitioner's Walton Street Property. Petitioner cites a multitude of activities that took place at the subject property during the tax years at issue, but has failed to establish that any of these activities involved worship or the teaching of religious principles and beliefs. Aside from a few references to Bible school or studies, there is nothing on record to even suggest the occurrence of

worship or teaching. Petitioner relies heavily on the fact that the property was utilized for ministries of the church and the fact that such use was in accordance with its overall purpose. And while community service may be charitable and benevolent, and an essential part in carrying out Petitioner's overall purpose, the Tribunal cannot conclude that it furthers the specific purpose of teaching religious principles.

Church Elder and Assistant Minister to the Pastor, James E. Parks, Jr., testified that "Helping Hands was part of the outreach [ministry]. The reason we had Helping Hands was so we could minister to the people, to reach the people to bring them to the church . . . ." Parks Deposition, p. 23. Additional deposition testimony suggests that the same could be said for most, if not all, of the relevant ministry councils, and promoting religious services and bringing people to the teachings of the church, is not in and of itself, teaching. Even assuming arguendo that some teaching was associated with the various ministry services and activities, "[t]he occurrence of *some* teaching does not mean that the [property] [is] 'predominantly' used for teaching. . . . The issue is . . . whether *teaching* is the *predominant* function of this [property] that sits apart from the actual [church] and classrooms." *Congregation Mishkan Israel Nusach v H'ari Oak Park*, unpublished opinion of the Court of Appeals, issued December 13, 2012 (Docket No. 306465), p 4.

VII. JUDGMENT

The Tribunal, having given careful consideration to the parties' cross motions for summary disposition under the criteria for MCR 2.116(C)(10), and based on the pleadings, affidavits, and other documentary evidence provided, finds that Petitioner has failed to sufficiently support its position that the property qualifies for exemption from ad valorem property taxation under MCL 211.7s for the 2009, 2010, and 2011 tax years at issue in this appeal. As such, and inasmuch as Petitioner has also failed to present any documentary evidence establishing the existence of a genuine issue of material fact as to the property's exemption status in those years, Respondent is entitled to judgment as a matter of law. Therefore,

IT IS ORDERED that Petitioner's Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition is GRANTED.

MICHIGAN TAX TRIBUNAL

By: Marcus L. Abood

Entered: