STATE OF MICHIGAN
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GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
CHRIS SEPPANEN
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DIRECTOR

May 7, 2015

Dear Tax Tribunal Practitioner:

Tribunal Member News

After five years of exceptional service as the appraiser Member of the Tribunal, Marcus Abood is retiring from the Tribunal. Effective May 11, 2015, Marcus will be replaced by Valerie Lafferty. Valerie has been appointed to the Tribunal as our appraiser Member for a term ending June 30, 2018. Valerie is both a licensed appraiser and licensed attorney in Michigan and brings a wealth of appraisal experience to the Tribunal. Valerie is a graduate of Michigan State University, Wayne State University, and MSU College of Law. Most recently, Valerie served as a review appraiser for the Michigan Department of Natural Resources. We welcome Valerie as a new judge at the Michigan Tax Tribunal.

Also, David Marmon, who was appointed to fill a vacancy at the Tribunal in 2014, has been reappointed as a Tribunal Member to a four-year term ending in June 2019. Dave has been an effective Member of the Tribunal over the past year and we look forward to Dave's contributions during the next four years.

Filing Dates for Petitions

The Tribunal would like to remind practitioners that the May 31st deadline for filing commercial real property, industrial real property, developmental real property, commercial personal property, industrial personal property, or utility personal property valuation appeals is approaching. As you are aware, this year May 31, 2015, falls on a Sunday. As a result, the Tribunal will accept petitions postmarked or electronically filed on or before June 1, 2015, as timely filed.

Friday, July 31, 2015, is the deadline for filing valuation appeals involving property classified as agricultural real property, residential real property, timber-cutover real property, or agricultural personal property.

Please remember that the Tribunal does not accept petitions filed by e-mail (as opposed to e-filing) or facsimile. As a result, the Tribunal will be disconnecting its fax machine at the close of business on May 29, 2015, and reconnecting it as of the opening of business on June 2, 2015, and will disconnect the fax machine again at close of business on July 30, 2015, and reconnect on

August 3, 2015. This brief interlude will allow the Tribunal to dedicate its efforts to processing new appeals and will ensure that petitioners do not incorrectly rely on an appeal filed via facsimile. Finally, if a petition is filed by e-mail the Tribunal will not respond and the e-mail will be deleted.

With respect to e-filing, if you encounter technical issues please feel free to call the Tribunal. However, to ensure you are directed to the correct staff for assistance, please make sure you indicate to the receptionist you have questions specific to electronically filing documents.

Court of Appeals Decisions

Franklin Ridge Homes, LLC v City of Westland, unpublished opinion per curiam of the Court of Appeals, issued April 28, 2015 (Docket No. 319626).

Petitioner originally filed a small claims appeal for the subject properties in 2010 and, pursuant to MCL 205.737(5)(b), the 2011 tax year was added to the appeal. The Tribunal then dismissed the separate ET appeal filed by Petitioner for the 2011 tax year. Petitioner appealed the Tribunal's judgment, which determined the true cash, assessed, and taxable values of 13 parcels of property for the 2011 tax year in the original small claims case. Petitioner argued that the Tribunal erred in dismissing 36 parcels of property from the 2011 appeal, and in denying its motion to transfer and consolidate the case with its 2010 valuation appeal. With the exception of a single parcel of property not addressed by the parties' consent judgment and remanded accordingly, the Court of Appeals affirmed. The Court held that dismissal of the parcels was not a sanction or abuse of discretion under *Grimm v Treasury Dep't*, 291 Mich App 140, 149; 810 NW2d 65 (2010). The appeals were dismissed pursuant to MCL 205.737(5)(b), and "[w]hile petitioner may have changed its mind regarding what forum it preferred, it chose to file in the small claims division. Petitioner either knew or should have known that appeals for subsequent years would be automatically included in that case." As for Petitioner's argument that there was no rule prohibiting an overlapping appeal, the Court held that it was without merit, as challenging the same assessments in two different appeals would be barred by res judicata. Further, though no value determination was made for the 2011 tax year in the 2010 appeal, this was based on a factual finding that the parcels sold in November 2010, and a determination that Petitioner was no longer a party in interest. The fact that only one property actually sold in 2010 was irrelevant, as Petitioner did not bring this error to the attention of the Tribunal before the proposed judgment was adopted as a final order, nor appeal the judgment to the Court of Appeals. The Tribunal's decision did not contravene the administrative rule governing transfers or MCL 205.737(5)(b), as decisions under both are discretionary. Finally, the Tribunal's denial of Petitioner's untimely motion for reconsideration was not an abuse of discretion.

Lucre, Inc. v City of Grand Rapids, unpublished opinion per curiam of the Court of Appeals, issued April 28, 2015 (Docket No. 319781)

Petitioner appealed the Tribunal's order denying its motion for reconsideration. The Tribunal concluded that because Petitioner did not own, use, and occupy the subject property, it was not subject to assessment by the State pursuant to 1905 PA 282 ("Act"), but rather was assessable by the City of Grand Rapids under the General Property Tax Act. Petitioner, a telephone company, leased the property at issue from Kent County. Petitioner argued that the Tribunal erred in its determination because MCL 211.181 required that it be treated as if it owned the property. The Court of Appeals affirmed, however, holding that the Tribunal's determination was supported by the plain language of the Act. Further, and despite Petitioner's assertions to the contrary, the Act and its specific use of the term "owns" conflicted with MCL 211.181(1), which mandates that leased property be taxed in the same amount and to the same extent as if owned by the lessee.

MS Brighton LLC v City of Brighton, unpublished opinion per curiam of the Court of Appeals, issued April 21, 2015 (Docket No. 319909)

City of Brighton ("Respondent") appealed the Tribunal's valuation of property owned by MS Brighton, LLC ("Petitioner"). The Tribunal concluded that valuation of the property as future commercial development was legally permissible, but not financially feasible because the cost to construct a loop road under the existing ordinance would be cost prohibitive ($3.1-$3.4 million, as compared to the $1,478,400 TCV indicated for the property). Accordingly, the Tribunal concluded that the highest and best use of the property was recreational/future development use. Respondent argued that the Tribunal erred when it failed to "take into account the likelihood that petitioner would be granted a zoning variance for the placement of a road with a cul-de-sac, rather than the required loop road, and then valuing the property as if such a variance would be granted if requested." The Court of Appeals affirmed the Tribunal's determination, holding that its "refusal to consider a potential use variance in valuing the property did not amount to a legal or factual error." It concluded that this determination was supported by both the Michigan Zoning Enabling Act ("MZEA") and Respondent's own ordinance, both of which indicated only that a variance *may* be granted, as well as the testimony of Petitioner's expert. The Court reasoned that "the fact that variances may be granted does not equate to a finding that such a variance must be or likely will be granted upon request."

Baruch SLS, Inc. v Township of Tittabawasee, unpublished opinion per curiam of the Court of Appeals, issued April 21, 2015 (Docket No. 319953)

Baruch SLS, Inc. ("Petitioner") appealed the Tribunal's denial of its claim of exemption under the charitable exemption set forth in MCL 211.7o. Petitioner argued that the Tribunal erred in concluding that it did not satisfy all of the requirements of the *Wexford* "charitable institution" test. Though it concluded that the Tribunal's other grounds for denying the claim of exemption were erroneous, the Court of Appeals affirmed, holding that the Tribunal correctly concluded that Petitioner offered its charity on a discriminatory basis: "[P]etitioner's only stated charity care policy is the income based program, itself. But to be eligible for the program, one must first be a resident. And to be a resident, one must have the ability to pay at the outset . . . . This type

of pay-to-play policy means petitioner does not 'serve[] any person who needs the particular type of charity being offered.'" Petitioner's evidence established, however, that its revenue was insufficient to cover its costs, and as such, the Tribunal erred in determining that Petitioner's charges for services were more than what was necessary for its successful maintenance. The Tribunal also erred in concluding that Petitioner's overall nature was commercial, as it focused on Petitioner's specific activities out of context, and not "as a whole," as required by Wexford.