



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

ORLENE HAWKS  
DIRECTOR

Bois Blanc Township,  
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 20-001072

City of Cheboygan,  
Respondent.

Presiding Judge  
Christine Schauer

## FINAL OPINION AND JUDGMENT

### INTRODUCTION

Petitioner, Bois Blanc Township, appeals Respondent, City of Cheboygan's, denial of its claim for exemption from ad valorem property taxation for parcel number 16-052-W59-035-001-00 under MCL 211.7m for the 2020 and 2021 tax years.<sup>1</sup> Andrew J. Gordon, Attorney, represented Petitioner, and Stephen E. Lindsay, Attorney, represented Respondent.

A hearing on this matter was held on August 10, 2021. Petitioner's witnesses were Diane Akright, Bois Blanc Township Clerk, and Brent Sharpe, Bois Blanc Township Supervisor. The Tribunal excluded Respondent's witnesses for failure to file and exchange its prehearing statement but allowed Respondent's cross-examination of Petitioner's witnesses.

Based on the evidence, testimony, and case file, the Tribunal finds that the subject property shall not be granted an exemption under MCL 211.7m for the 2020 or 2021 tax year.

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<sup>1</sup> See MCL 205.737(5)(a).

The subject property's taxable value (TV), for the tax years at issue, shall be as follows:

**Parcel Number:** 16-052-W59-035-001-00

Year	TV
2020	\$118,100
2021	\$119,753

#### PETITIONER'S CONTENTIONS

Petitioner contends that the subject property should be exempt from property taxes under MCL 211.7m as it is township owned, designated for use as an unimproved public park, offers public parking, and is used by other public entities for their purposes. Further, Petitioner is taking steps to develop the subject property as a public ferry docking location with needed amenities to serve as a transportation hub to Bois Blanc Island.

#### PETITIONER'S ADMITTED EXHIBITS

- P-1 2020 March Board of Review (BOR) Decision
- P-2 October 2018 Survey
- P-3 Real Estate Purchase Agreement (09/18/2018)
- P-4 First Addendum to real Estate Purchase Agreement (11/19/2018)
- P-5 Phase 1 Environmental Assessment Proposal
- P-6 Phase 2 Environmental Assessment Report
- P-7 Soil Boring Report (12/30/2006)
- P-8 Bois Blanc Township Resolution No. 2019-005
- P-9 Land Contract (03/12/2019)
- P-10 Memorandum of Land Contract (filed 03/13/2019)

P-11 Executive Order 2020-04; Declaration of State of Emergency

P-12 Executive Order 2020-33: Expanded Emergency and Disaster Declaration

P-13 Letter to Mr. Tom Eustice (12/17/2019)

P-14 Letter to Mr. Tom Eustice (01/16/2020)

### PETITIONER'S WITNESSES

#### Diane Akright

Diane Akright is the Bois Blanc Township Clerk. Ms. Akright testified regarding the process undertaken and legal documents executed by Petitioner to purchase the subject property and Petitioner's current and planned uses of the property. Ms. Akright testified that the subject property is a riverfront parcel located in the City of Cheboygan and was purchased in or around March 2019 by Petitioner via a land contract to develop it as a mainland marina/transportation station to serve Bois Blanc Township, which is on an island in Lake Huron. Ms. Akright confirmed that Petitioner's Exhibit P-8 was the resolution passed by the Township Board on January 18, 2019, authorizing the purchase of the subject property, and defining the planned uses of the subject. Ms. Akright testified that the main use would be as a ferry landing site, which would be developed in stages, and that it could be and was currently used for public parking, an unimproved public park, and by other governmental entities prior to the ferry facilities being fully developed.

Ms. Akright testified that several activities were undertaken prior to the purchase of the subject property to assure that the planned uses were feasible and allowable including environmental studies, zoning inquiries, and Coast Guard inquiries, and no

problems presented for developing the subject property as a transportation terminal for ferries.

Ms. Akright testified that Petitioner requested a 2020 property tax exemption at Respondent's March BOR, but it was denied (Exhibit P-1).

Ms. Akright testified that there were delays in pursuing the development of the subject property as planned during 2020 due to COVID-19 restrictions per executive orders issued by the Governor in addition to resources being redirected to repair a collapsed ferry landing on the island caused by high water levels in Lake Huron during 2019, but that UP Engineering & Architects has since been selected to develop the scope of the project at the subject property using a five-year timeline.

On cross-examination, Ms. Akright confirmed the payment schedule called for in the land contract agreement and also confirmed that Petitioner has the right to develop the subject property prior to obtaining deeded ownership with written permission from the current deeded owner. Ms. Akright testified that she had no information at hand of how much money has been expended on improvements since the purchase of the subject property. Ms. Akright testified that to her knowledge there is no signage at the subject property inviting public usage and that there is a gravel driveway access there but no street or roadway improvements, no parking enhancements, and no utilities have been run from the roadway.

On further testimony, Ms. Akright confirmed that Petitioner has approved the use of an engineering firm and is seeking grant money to help pay for development costs, although their marina fund, which is funded through taxes, has money for capital

expenditures. Ms. Akright testified that there were no physical improvements made to the subject property by Petitioner during 2020.

Brent Sharpe

Brent Sharpe is the Bois Blanc Township Supervisor and a private business owner. Mr. Sharpe testified regarding Petitioner's need for a municipal mainland ferry landing, the land purchase process and intent, and development plans for and uses of the subject property since purchase. Mr. Sharpe confirmed that paragraph 3 of Petitioner's resolution authorizing the purchase of the subject property (Exhibit P-8) delineates the intended development plans for the subject property that are the guidelines given to the engineers to fulfill with their plan development.

Mr. Sharpe testified that Petitioner gave formal notice to Respondent on December 17, 2019, of its purchase of the subject property and its intent to pursue a tax exemption for the subject property.

Mr. Sharpe continued testimony by describing the involvement of the Harbor Commission, an advisory board of the township, their role, and his role with the Harbor Commission.

On cross examination, Mr. Sharpe confirmed the due diligence steps taken prior to Petitioner's purchase of the subject property. Mr. Sharpe testified that no signage has been placed on the subject and that no driveway permit has been obtained from Respondent, but that the subject property is accessed via the existing road on the property that Respondent uses to inspect their waterline and storm drain on the subject property. Mr. Sharpe described the road as a gravel two-track through a field. Mr. Sharpe claims that people use the subject property for fishing.

On further testimony, Mr. Sharpe described the development process and testified that no utilities or other improvements have been installed because the project is still only in the blueprinting and planning stages. Regarding public parking on the subject property, Mr. Sharpe claims that anyone can use the two-track to access the property and people do park there and then go fishing, which Petitioner has not restricted. There are no fences or ditches keeping people out. Mr. Sharpe testified that Respondent's employees use the property to access and monitor their drainage ditch and waterline and the Coast Guard has used it for their range markers.

Mr. Sharpe testified that the only monies spent are by the Harbor Commission to assess and evaluate the subject property and confirmed that no physical changes were made to the subject property in 2020 or to date in 2021 although an engineering firm has been engaged and has started the planning.

On re-direct examination, Mr. Sharpe testified that people fish at the subject property which has about 1,300 feet of riverbank and that the City of Cheboygan (Respondent) enters the subject property to monitor its infrastructure as does the Coast Guard to place markers which are the uses of the subject property.

#### RESPONDENT'S CONTENTIONS

Respondent contends that the subject property is not eligible for tax exemption under MCL 211.7m as it was not used for a public purpose during the years at issue in this case, but instead, Petitioner is holding it for possible future development for public use. Respondent claims that no physical improvements or changes have been made to the subject property since it was acquired by Petitioner on March 12, 2019, and there is no evidence that the subject property is in use as a public park or for public parking.

## RESPONDENT'S ADMITTED EXHIBITS

None

## RESPONDENT'S WITNESSES

None

## FINDINGS OF FACT

The Tribunal's Findings of Fact concern only evidence and inferences found to be significantly relevant to the legal issues involved; the Tribunal has not addressed every piece of evidence or every inference that might lead to conflicting conclusion and has rejected evidence contrary to those findings.

1. The subject property is a 5.8 acre unimproved riverfront parcel located at 320-325 Coast Guard Drive in the city of Cheboygan, Michigan, near the mouth of the Cheboygan River.
2. Petitioner is a Michigan Township located on Bois Blanc Island in Lake Huron.
3. On January 18, 2019, Petitioner passed Resolution 2019-005 authorizing the purchase of the subject property to develop at some future point for the following uses: as a landing and dockage for vehicle ferries for travel to and from Bois Blanc Island; public docks or piers; public parking; public park and park-like uses; a public transportation terminal, boat ramp or launch, related facilities, and miscellaneous public and governmental uses. Prior to construction of the foregoing, Petitioner may use the subject property for public parking, unimproved or improved public park purposes, and for use by other governmental units and agencies, as well as utilities serving the public.<sup>2</sup>

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<sup>2</sup> See Exhibit P-8 at 4.

4. Petitioner purchased the subject property via a land contract on March 12, 2019.
5. Petitioner officially notified the City of Cheboygan (Respondent) of its purchase of the subject property via a letter dated December 17, 2019, sent via registered mail.
6. In a letter to Respondent dated January 16, 2020, Petitioner requested that the subject property be exempt from property tax pursuant to MCL 211.7m.
7. On March 31, 2020, Respondent's March 2020 Board of Review (BOR) Decision denied the exemption and set the taxable value (TV) of the subject property at \$118,100.
8. Petitioner filed an appeal of the BOR decision with the Michigan Tax Tribunal on April 23, 2020, and Respondent filed its Answer on July 31, 2020.
9. On May 18, 2021, Petitioner filed a Motion for Summary Disposition.
10. On July 6, 2021, the Tribunal entered an Order Partially Granting Petitioner's Motion for Summary Disposition, which granted summary disposition in favor of Petitioner for all elements of the exemption except the issue of whether the subject property was used for public purposes during the tax years at issue here.
11. As of December 31, 2019, tax day for the 2020 tax year, Petitioner had not developed the subject property to accommodate any of the future public uses listed in its Resolution 2019-005, nor engaged in formal planning for such, and the physical state of the subject property remained as an unimproved parcel.
12. As of December 31, 2020, tax day for the 2021 tax year, Petitioner had not developed the subject property to accommodate any of the future public uses



listed in its Resolution 2019-005, nor engaged in formal planning for such, and the physical state of the subject property remained as an unimproved parcel.

13. At some unspecified time in 2021, Petitioner, through its Harbor Commission, engaged UP Engineering & Architects to develop a plan for the subject property according to the uses defined in Petitioner's Resolution 2019-005.

14. Respondent's personnel traverse the subject property via a two-track gravel road to monitor water and/or drainage infrastructure on or near the subject property.

15. Coast Guard personnel traverse the subject property to post signal flags upon the property for navigation of their boats.

16. Unknown individuals park vehicles at/on the subject property and fish from the riverbank of the subject property.

#### CONCLUSIONS OF LAW

The issue in this matter is whether Petitioner's property qualifies for a property tax exemption pursuant to MCL 211.7m as a tax-exempt organization.

The petitioner must prove, by a preponderance of the evidence, that it is entitled to an exemption.<sup>3</sup>

MCL 211.7m provides:

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. Parks shall be open to the public generally. This

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<sup>3</sup> See *ProMed Healthcare v Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002).

exemption shall not apply to property acquired after July 19, 1966, unless a deed or other memorandum of conveyance is recorded in the county where the property is located before December 31 of the year of acquisition, or the local assessing officer is notified by registered mail of the acquisition before December 31 of the year of acquisition.<sup>4</sup>

Because the Tribunal entered an Order Partially Granting Petitioner's Motion for Summary Disposition which found in favor of Petitioner on all elements in dispute in the instant case except the determination whether the subject property is used for public purposes, the use of the subject property for the 2020 and 2021 tax years is the only issue addressed here.

Petitioner's witness, Diane Akright, referring to Petitioner's Resolution 2019-005 which authorized the purchase of the subject property testified, "It lays out the purpose for the purchase and our intent to develop it into, long-term anyway, into a marina or our transportation station for us."<sup>5</sup> Ms. Akright further claims that there have been circumstances that have delayed Petitioner's development of the subject property when she testified as follows:

The high water, the historic high water for Lake [] [Huron] caused some issues for our marina on this side which definitely had to be addressed before we could move forward with continuing development. December of 2019 I believe it was [,] our ferry landing collapsed, so 2020 was a year of rebuilding and we had to refill some washouts in the marina area themselves on this side. Along with that, problems came along with COVID made it very hard for our Harbor Committee to actually meet when there are stay-at-home orders and stuff in order to conduct the business that was necessary.<sup>6</sup>

However, Ms. Akright testified that there were uses provided for in Resolution 2019-005 for the subject property until it could be developed. "It could be used for public

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<sup>4</sup> *Id.*

<sup>5</sup> Transcript (Tr.) at 20.

<sup>6</sup> Tr. at 38-39.

parking, unimproved public park. And it could be used for a number of different agencies, if chosen.”<sup>7</sup>

Petitioner claims that it has made the subject property available for informal public use as an unimproved park and parking lot and does not restrict any usage of the property for recreation or for government entities to utilize for monitoring their infrastructure and to assure safe passage of Coast Guard boats and therefore, meets the definition of “public use” required for tax exemption. Brent Sharpe, witness for Petitioner, when asked to explain the steps taken to ensure public parking is something the subject is utilized for, testified as follows:

Well, we did not close the two-track road that accesses the property, and the people that are fishing out there have been utilizing it. They park their vehicle, they fish, and then they leave. There’s been no restrictions put on it. There’s no fencing. There’s no gates. There’s no ditches across the road stopping people from coming in and out. It’s very accessible if people would like to go out on it.<sup>8</sup>

Mr. Sharpe further testified to uses made by governmental units and agencies as follows:

Other than the city monitoring their drainage ditch and also their waterline that crosses the river at that point, the Coast Guard has put up markers for their – range markers to turn the boat around when they come into the harbor. We have no objections to them putting those things out there. We could probably further assist them in making those more of a permanent fixture if they’d like us to accommodate them. There’s no restrictions that we put on it. Everyone is allowed to go do what they like.<sup>9</sup>

Respondent claims that these uses do not rise to the definition of “public use” because there are no public park-like improvements, no utilities, and as of the relevant

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<sup>7</sup> Tr. at 23.

<sup>8</sup> Tr. at 90.

<sup>9</sup> Tr. at 91.

tax dates, there had not been any formalized planning for the intended public uses expressed in Petitioner's Resolution 2019-005. Respondent further claims that the uses of the property by the occasional fisherman and by the City of Cheboygan to inspect water infrastructure are no different than how it was used prior to Petitioner purchasing the subject. When asked by Respondent's attorney if anything was changed on the parcel in tax year 2020, Mr. Sharpe testified, "We have not done any physical changes to the property without having the proper permits or a proper direction to go in[]."10 When asked a similar question regarding changes in tax year 2021, Mr. Sharpe testified, "[In] 2021 we have obtained the engineering firm and started forward on our planning . . ."11

Regarding tax exemption based on future use, Petitioner relies on *City of Mt. Pleasant v State Tax Commission*.<sup>12</sup> However, the Tribunal finds that though this case is relevant, Petitioner's reliance is misplaced. The Supreme Court in that case reaffirmed that a *present* use is required, and though it did acknowledge that, "[i]t takes time to assemble and prepare land,"<sup>13</sup> the property in that case was acquired for economic development as opposed to a specific project as is envisioned for the subject property. Further in *Mt. Pleasant*,

The city engaged in a number of activities, such as expanding and installing streets and public utilities, to indicate that it purposefully moved toward implementation of its development plan for the land and did not delay in engaging in reasonable activities to prepare the land to attract economic development that would create jobs, stimulate investments, and ensure a sound and growing tax base.<sup>14</sup>

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<sup>10</sup> Tr. at 94.

<sup>11</sup> Tr. at 95.

<sup>12</sup> *City of Mt Pleasant v State Tax Commission*, 477 Mich 50; 729 NW2d 833 (2007).

<sup>13</sup> *Id.* at 56.

<sup>14</sup> *Id.*

Petitioner in the instant case has not taken any steps or engaged in any activities towards development of the subject property since purchasing it, nor had it even developed any specific plans as of either the 2020 tax day of December 31, 2019, nor the 2021 tax day of December 31, 2020.<sup>15</sup> Petitioner argued that due to Covid-19 restrictions and high lake levels that damaged its island marina, planning and development activities for the subject property had to be delayed. While the Tribunal does not doubt these claims, they do not change the fact that no planning or development activities took place during the tax years at issue here. Therefore, the Tribunal finds that Petitioner's mere holding of the subject property for future development as is specified in its Resolution 2019-005<sup>16</sup>, does not meet the definition of public use nor does it equate with the facts and circumstances in the *Mt. Pleasant* case as claimed by Petitioner. The distinguishing factor in *Mt. Pleasant* is that they actually started to make improvements to the land to effectuate the public use, thereby meeting the current public use requirement.

Regarding Petitioner's claim that the subject property was in public use during the years at issue as public parking, an unimproved public park, and for use by other governmental agencies, the Supreme Court has held that "a 'public purpose' promotes '

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<sup>15</sup> See *State Treasurer v City of St Joseph*, unpublished per curiam opinion of the Court of Appeals, issued August 1, 1997 (Docket No. 194753): "Tax exemptions are the antithesis of tax equality. Therefore, exemption statutes are to be strictly construed in favor of the taxing unit. MCL 211.7m; MSA 7.7(4j) does not exempt defendant from real property taxation. Rather, it exempts from taxation the parcels of real property owned by defendant as of tax day if such parcels are used for public purposes. The Tax Tribunal has interpreted this to require the occurrence of two events before an exemption is granted: first, the property must be owned by a county, township, city, village or school district; and second, the property must be used for public purposes. Importantly, however, "[i]t is the use of the property at the time when the tax is assessed [tax day] which determines whether it is exempt from taxation or not." *Id.* (citations omitted).

<sup>16</sup> See Exhibit P-8 at 3, "The Township will develop the River Parcel at some point in the future as specified below . . .".

‘public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within the municipal corporation . . . ’<sup>17</sup> While the Tribunal agrees with Petitioner that actual improvements are not required, Petitioner has described such limited use by the public and other agencies (i.e. fishing and monitoring infrastructure) and has not provided any documentary evidence of inviting or advertising the availability of public use at the subject that the Tribunal is not convinced that the uses on the tax days at issue rise to the level to warrant exemption for public use. Therefore, the Tribunal finds that the subject property is not entitled to exemption under MCL 211.7m as of December 31, 2019, for tax year 2020, nor on December 31, 2020, for tax year 2021, and upholds Respondent’s denial of the exemption.

#### 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 exemption within 20 days of entry of this Final Opinion and Judgment, subject to the processes of equalization.<sup>18</sup> 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 Final Opinion and Judgment. If a refund is warranted, it shall

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<sup>17</sup> *City of Mt Pleasant*, 477 Mich at 54.

<sup>18</sup> See MCL 205.755.

include a proportionate share of any property tax administration fees paid and 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, 2013, through June 30, 2016, at the rate of 4.25%, (ii) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (iii) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (iv) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (v) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (vi) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (vii) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (viii) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (ix) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (x) after June 30 2020, through December 31, 2020, at the rate of 5.63%, (xi) after December 31, 2020, through December 31, 2021, at the rate of 4.25%.

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

#### APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A motion for reconsideration must be filed with the Tribunal with the required filing fee within 21 days from the date of entry of the final decision. Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee. You are required to serve a copy of the motion on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion. Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

A claim of appeal must be filed with the Michigan Court of Appeals with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave." You are required to file a copy of the claim of appeal with filing fee with the Tribunal in order to certify the record on appeal. The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.



Entered: October 28, 2021

By Christine Schawy

**PROOF OF SERVICE**

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provide by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk