Grace Baptist Church of Gaylord,
Petitioner,

v

Bagley Township,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 20-000085-R

Presiding Judge
Steven M. Bieda

SUPPLEMENTAL FINAL OPINION AND JUDGMENT

The Tribunal issued a Supplemental Proposed Opinion and Judgment (SPOJ) on September 14, 2022. The SPOJ states, in pertinent part, "[t]he parties have 20 days from date of entry of this SPOJ to notify the Tribunal in writing, by mail or by electronic filing, if available, if they do not agree with the SPOJ and to state in writing why they do not agree with the SPOJ (i.e., exceptions)."

Neither party has filed exceptions to the SPOJ.

The Administrative Law Judge (ALJ) considered the testimony and evidence and made specific findings of fact and conclusions of law. The ALJ's determination is supported by the testimony and evidence and applicable statutory and case law.

Given the above, the Tribunal adopts the SPOJ as the Tribunal's final decision in this case.[1] The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the SPOJ as well as the Proposed Opinion and Judgment and Final Opinion and Judgment in Docket No. 20-000085 in this Final Opinion and Judgment. As a result:

Parcel No. 69-010-005-200-045-00 shall be granted an exemption, under MCL 211.7s, for the 2019 tax year; the amount of the exemption is 100%.

Parcel No. 69-010-005-200-045-00 is not entitled to an exemption, under MCL 211.7s, for the 2020 tax year.

Parcel No. 69-010-005-200-050-00 shall be granted an exemption, under MCL 211.7s, for the 2019 tax year; the amount of the exemption is 100%.

Parcel No. 69-010-005-200-050-00 is not entitled to an exemption, under MCL 211.7s, for the 2020 tax year.

[1] See MCL 205.726.

The property's taxable value (TV), as established by the Board of Review for the tax year at issue, is as follows:

Parcel Number: 69-010-005-200-045-00

Year	TV
2019	$165,920
2020	$169,072

Parcel Number: 69-010-005-200-050-00

Year	TV
2019	$403,250
2020	$410,911

The property's TV, for the tax year at issue, shall be as follows:

Parcel Number: 69-010-005-200-045-00

Year	TV
2019	$0
2020	$169,072

Parcel Number: 69-010-005-200-050-00

Year	TV
2019	$0
2020	$410,911

IT IS SO ORDERED.

IT IS ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) 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.[2] 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 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

[2] See MCL 205.755.

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 June 30, 2022, at the rate of 4.25%, and (xii) after June 30, 2022, through December 31, 2022, at the rate of 4.27%.

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.

By _____

Entered: October 31, 2022
ssm

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

Grace Baptist Church of Gaylord,
Petitioner,

v

Bagley Township,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No.20-000085-R

Presiding Judge
Peter M. Kopke

SUPPLEMENTAL PROPOSED OPINION AND JUDGMENT

INTRODUCTION

The Tribunal entered a Proposed Opinion and Judgment (POJ) in the above-captioned case on August 20, 2021 finding the properties at issue (i.e., Parcel Nos. 69-010-005-200-045-00 and 69-010-005-200-050-00) were **not** exempt under either MCL 211.7o or 211.7z for either the 2019 or 2020 tax years but exempt under MCL 211.7s for the 2019 tax year only. As a result, the properties' true cash value (TCV), state equalized value (SEV), and taxable value (TV) for the tax years at issue were found to be as follows:

Parcel Number	Year	TCV	SEV	TV
69-010-005-200-045-00	2019	N/A	N/A	$0.00
69-010-005-200-045-00	2020	N/A	N/A	$169,072

Parcel Number	Year	TCV	SEV	TV
69-010-005-200-050-00	2019	N/A	N/A	$0.00
69-010-005-200-050-00	2020	N/A	N/A	$410,911

Respondent filed exceptions to the POJ on September 3, 2021 and Petitioner filed a response to the exceptions on September 17, 2021. The exceptions were considered, and a Final Opinion and Judgment (FOJ) was entered on October 14, 2021, adopting the POJ. Respondent did, however, file a Motion for Reconsideration on October 29, 2021 and the Tribunal entered an Order on December 27, 2021, granting

the Motion, vacating the FOJ, and reinstating the case. In that regard, the Order provided that:

> The Tribunal has considered the Motion and the case file and finds that Respondent has shown good cause to justify vacating the FOJ. Specifically, the Tribunal finds that the FOJ did not err in considering whether Petitioner qualified for an exemption under MCL 211.7s because its jurisdiction is original and *de novo* and because it is required to make an independent determination of value as well as taxable status. However, Respondent's Motion correctly contends that it was deprived of a meaningful opportunity to address the legal issues regarding Petitioner's eligibility under MCL 211.7s because Petitioner specifically requested no consideration under that subsection. A party to a Tribunal case must be generally aware of the arguments being made so it has a fair opportunity to rebut those arguments.[1]

As a result, of the December 27, 2021 Order, a status conference was conducted on January 18, 2022 and a Scheduling Order issued on January 19, 2022, providing for the filing of a Supplemental Brief by Respondent and a Response to that Brief by Petitioner. In compliance with that Order, Respondent timely filed its Supplemental Brief on February 17, 2022, and Petitioner timely filed its Response on March 28, 2022.

In Respondent's Supplemental Brief, Respondent claims that:

> "The Respondent agrees with the Proposed Opinion and Judgment in regards to the 2020 tax year. The properties were closed down so that Petitioner could try to sell them. Therefore, there was no religious use of these parcels for the 2020 tax year."

Respondent also claims that:

1. "In addition to the requirement that tax exemption statutes must be strictly construed in favor of the taxing authority, the proper standard to apply to each case is the preponderance of the evidence. This is the standard set forth on page 12 of the Proposed Opinion and Judgment and Respondent agrees that this is the proper standard."

2. "The applicable statute, 2I1.7s requires that the property must be owned and occupied by the exemption claimant and used primarily for religious services or for teaching the religious truths and beliefs of the society.

[1] See the unpublished opinion *per curiam* issued by the Michigan Court of Appeals in *South Davison Community Center, Inc v Davison Township* on October 25, 2022 (Docket No. 232346).

The case law is clear on what use is required for a property to be entitled to an exemption as a church under 211.7s.

In *Michigan Christian Campus Ministries, Inc v City of Mount Pleasant*, 110 Mich App 787 (1982) the case involved students at Central Michigan University who resided in a house owned by Petitioner and was to provide selected students to live together in a Christian atmosphere. The Court stated at page 483 as follows:

> 'The property is one of several Campus Houses operated by petitioner in Michigan college communities. It is a three-story wood frame structure containing eight bedrooms, two bathrooms, two meeting rooms, an office, a kitchen, and a dining room. The Campus House is under the direction of an ordained Church minister, who uses the office to conduct religious counseling and for administrative duties. He does not live in the house.'

. . . .

During the hearing, Petitioner's witnesses testified that parcel 69-010-005-200-050-00 was used as a resale shop but that occasionally some of the officers of the church would hold meeting[s] there.

In regards to parcel 69-010-005-200-050-00 Petitioner's witnesses testified that this property was used as an off-site women's dorm and that there were occasional prayers or counseling taking place at this location. This was similar to the case of *Michigan Christian Campus Ministries, Inc v City of Mount Pleasant*, 110 Mich App 787 (1982).

At page 484 the Court states as follows:

> In the present case, the Tax Tribunal relying on *National Music Camp v Green Lake Twp*, 76 Mich App 608, 257 NW2d 188 (1977), concluded that the substance of the campus house arrangement was to provide private living quarters for selected students. The exemption was denied despite the fact [110 Mich App 793] that the house was used for functions akin to those of a house of worship, because such functions were determined to be ancillary to the residential function rather than vise versa. We discern no error of Page 485 law or adoption of wrong principles by the Tax Tribunal. The fact that the majority of the rooms in the house are devoted to living space for the residents supports the Tax Tribunal's analysis. Although religious services are conducted at times, use of the property as a residence for college students is continuous.

In the subject case, the same is true for the women's dorm. There may have been an occasional prayer of counseling as testified by Petitioner's witnesses, the main function was to serve as living space for the students.

The resale shop also was used for occasional meetings of the church's officers, but the primary function was used as a resale shop.

Therefore, both parcels do not qualify for a religious exemption as the main function as a women's dorm for parcel 69-010-005-200-050-00 and the main function of the resale shop for parcel 69-010-005-200-045-00 are not sufficient to qualify for an exemption as a church under 211.7s.

There are numerous cases that address the issue of what type of use must be established in order to qualify for a religious exemption under 211.7s.

In *Congregation Mishkan Israel Nuscach H'ari v City of Oak Park*, Court of Appeals No. 306465 (2012) in an Unpublished Opinion the Court held at page 4 as follows:

> 'The occurrence of **some teaching does not mean that the apartments are 'predominantly' used for teaching.** Nor does the fact that a religious society's observances pervade all aspects of daily life mean that every building owned by that society is tax exempt because daily life occurs therein. **The issue is not whether observances take place, but whether teaching is the predominant function of this apartment complex that sits apart from the actual synagogue and classrooms.** The statute, which must be strictly construed in favor of the taxing authority, only allows for an exemption when the property is '**predominantly' used for holding religious services or teaching religious truths and beliefs and the record does not provide a basis for such a conclusion**[.]' [Emphasis in the original.]

. . . .

The women's dorm was predominantly used for sleeping. Even though there may have been an occasional prayer service or some counseling, it was not used predominantly for holding religious services or teaching religious truths and beliefs.

The resale shop was certainly not used for holding religious services or teaching religious truths and beliefs. It was predominantly used as a resale shop and an occasional meeting of the officers of the church.

The main case relied on by Respondent is *Congregation Yagdil Torah v City of Southfield*, Court of Appeals No. 314735 (2014) . . . . This case was on point

with the subject case as Petitioner was seeking a religious exemption under 211.7s for a single[-]family residence that was being used as a dormitory for female students. The dormitory was off campus from the synagogue. Petitioner testified in that case that some classes were held at the house and the seminary students. Also, the students observe religious services at the house on Friday nights and at the synagogue on other days.

This was the same fact situation as in the subject case regarding the parcel used for the women's dorm by Grace Baptist Church. The property was off campus just as in the subject case. It was used as a women's dorm just like in the subject case. Occasional prayers were made in the dorm just as in the subject case.

At page 7 the Court of Appeals held as follows:

'MCL 211.7s, which must be strictly construed in favor of the taxing authority, *Institute in Basic Life Principles, Inc*, 217 Mich App at 12, only allows for an exemption when the property is 'predominantly' used for holding religious services or teaching religious truths and beliefs. Accordingly, the issue is not whether observances take place, but whether *teaching is the predominant function of the subject property.* Because the vast majority of the students' classes and religious services take place at the off-site synagogue, the subject property is not used 'predominantly for religious services or for teaching the religious truths and beliefs' of petitioner, MCL 211.7s, and, therefore, it is not eligible for a tax exemption as a house of public worship.' [Emphasis in the original.]

It is clear that in regards to both the resale shop and also the women's dorm at the subject property that these parcels are not being used predominantly for holding religious services or teaching religious truths and beliefs. Therefore, neither parcel is entitled to a tax exemption as a church under 211.7s[.]

This same standard is found in the Tax Tribunal case of *Congregation Yagdil Torah v City of Southfield*, MTT Docket No. 382349 that was subsequently appealed to the Court of Appeals . . . .

At page 21, the Tax Tribunal states as follows:

> 'It has already been established that Petitioner, as a religious society, owns the subject property. Thus, the Tribunal must determine if the subject property is used predominantly for religious services or for the teaching of religious truths and beliefs.'

Now that the proper use test has been established to qualify for a religious exemption under 211.7s, it is important to look at the two parcels separately to see if either one qualifies for an exemption for the 2019 tax year.

Based on the above, in order to qualify for a religious exemption under MCL 211.7s the following must be met:

The subject property must be owned and occupied by the exemption claimant and is used predominantly for religious services or for the teaching of religious truths and beliefs.

Respondent will now address the 2 subject parcels based on the 3 requirements set forth above."

3. "Respondent believes that this parcel [Parcel No. 69-010-005-200-045-00 (The Resale Shop)] does not qualify for a religious exemption under 211.7s.

   The first test under MCL 211.7s is whether the property was owned and occupied by the exemption claimant. The property was owned by Grace Baptist Church for the 2019 tax year. However, it was not occupied by Grace Baptist Church for the 2019 tax year . . . . Rather, it was occupied by Westside Angels and used as resale shop for clothes.

   At the hearing, Respondent submitted Respondent's Exhibit R 15 Rebuttal and it was admitted into evidence. R 15 is identified as a document that is entitled Business Registration Certificate Person Conducting Business Under Assumed Name, or Co-Partnership. This is an official government document, and it was filed with the Otsego County Clerk's Office on March 6, 2017 and made a matter of public record.

   This Assumed Name Certificate contains the following language:

   'THE UNDERSIGNED hereby certifies, under the provisions of P.A. No. 1010, P.AA. if Michigan for the year the following person (or persons) now owns, carries on, conducts or transacts, or intends to own, carry on, conduct, transact, a business, or maintain an office or place of business, in the County of Otsego, State of Michigan, under the name, designation or style set forth below:

   1. NAME OF BUSINESS Westside Angels
   2. ADDRESS OF BUSINESS: 1665 M-32 W, Gaylord, MI 49735

      BUSINESS LOCATION Bagley (township)

   3. NAME OF PERSON OR PERSON, owning, transacting, or composing the above business, and the home post office address of each.

NAME OF PERSON	RESIDENCE ADDRESS (Street, City, State)
Gale Tucker	1271 Estelle Road, Gaylord, MI 49735

The address listed on the Assumed Name Certificate was in fact the address of the subject parcel. This Assumed Name Certificate was signed only by Gale Tucker and notarized and filed with the County Clerk.

Keeping in mind the requirement that exemption statutes are to be strictly construed in favor of the taxing unit, it is clear that Grace Baptist Church was not a party included with this Assumed Name Certificate and was not conducting business as Westside Angels at the subject property. Therefore, Grace Baptist Church was not occupying this parcel as it was occupied by Westside Angels.

Petitioner submitted P's Exhibit 5 which was a Certificate of Assumed Name with the State of Michigan on February 18, 2018. Grace Baptist Church of Gaylord, MI was the name of the corporation, limited partnership, or limited liability company and that the assumed name under which business is to be transacted was Grace Baptist College. It is clear that Grace Baptist Church knew how to file an Assumed Name Certificate with the State of Michigan and it could have also done this for Westside Angels if it truly was an owner or person or entity conducting business under the name of Westside Angels. But it failed to do so.

Petitioner attempted to show that it was somewhat loosely associated with Westside Angels by submitting Petitioner's Exhibit 7. Even if Petitioner was somewhat loosely associated with Westside Angels (and Respondent contends that it was not) then this would not be sufficient to satisfy the requirement that exemption statutes are to be strictly construed.

In regards to Petitioner's Exhibit 7, this was a document entitled 'Westside Angels Resale Financial Giving Record.' The very name indicates that it is the Record of Westside Angels and not Grace Baptist Church.

There were numerous problems with Petitioner's Exhibit 7.

First, it states 'Westside Angels opened May 6, 2017. Startup costs and donations of Westside Angels.'

The exhibit states that Westside Angels opened May 6, 2017. This would be consistent with Respondent's Rebuttal Exhibit No. 15 which shows that the Assumed Name Certificate for Westside Angels was filed on March 6, 2017.

The exhibit does not state what time period is covered by this document. Is this just for calendar year 2017? There is no evidence that it includes any time in 2018 which would be applicable for the 2019 tax year (i.e.[,] December 31, 2018). It refers in paragraph No.1 to 'Startup costs needed for reimbursement – i.e.[,] racks, shelving, pricing guns, tagging guns, etc. $3,500.00.'

At the bottom line of Petitioner's Exhibit 7 it states 'Grand Total for giving and startup costs $27,150.00.' Since the exhibit states that Westside Angels opened May 6, 2017 then it is reasonable to assume that these startup costs were for 2017 and not applicable to the 2019 tax year. Petitioner has the burden of proof by a preponderance of the evidence to show that these were in fact expenses of Grace Baptist Church for the 2019 tax year, and it failed to do so. There is no date on this exhibit other than May 6, 2017.

Second, Petitioner failed to offer any testimony to authenticate this Petitioner's Exhibit 7. The exhibit is not signed or dated. It does not show who prepared this exhibit and what authority that person had in regards to the document. No testimony was offered by Petitioner to authenticate this document and so Petitioner did not meet[] its burden of proof[.]

Third, the Petitioner's Exhibit 7 [] lists monies donated to Grace Baptist Church and products donated to Grace Baptist Church and monies and products donated to Grace Baptist College. How do you donate to yourself? If Westside Angels was an arm of Grace Baptist Church, then Grace Baptist Church could not donate to itself. The monies would simply be listed as income to the church based on revenue from the resale shop. Instead, the money and products are listed as donations from a separate legal entity (i.e.[,] Westside Angels).

It should also be noted that Westside Angels donated money and product to other organizations other than Grace Baptist Church such as donations to Grace Baptist Christian School, New Life Pregnancy Center, Homeless shelter, and Animal Shelter. Again, no testimony was provided by Petitioner that these were donations made by Grace Baptist Church or that they were made during the time period covered by the 2019 tax year.

Remember this exhibit is entitled 'Westside Angels Resale Financial Giving Record.' It is a document of Westside Angels and again, no testimony was offered by Petitioner of any witness from Westside Angels to authenticate the documents or testify as to the 'giving' of money and products by Westside Angels or to testify as to the time period covered by this exhibit or if Westside Angels was an arm of Grace Baptist Church. Petitioner had the burden of proof and failed to show sufficient proof that Westside Angels was related to Grace Baptist Church or what time period was covered by this exhibit.

In regards to the issue of was this parcel occupied by Grace Baptist Church for the 2019 tax year, Respondent submitted numerous photographs as evidence. Respondent's Exhibits 1 and 2 show the Westside Angels Resale Shop and shows the main rooms as the shopper enters the facility. These exhibits show racks and racks of clothing offered for resale.

Respondent's Exhibit 3 shows a back room used for sorting items. Respondent's

Exhibit 4 shows a small room used for storage. Respondent's Exhibit 5 shows a room of Westside Angels that was used for men's clothing.

Respondent's Exhibits 1 through 5 show that the property was not occupied by Grace Baptist Church. It was occupied by Westside Angels which was a separate legal entity. No testimony was provided by Petitioner to show that Westside Angels was legally a part of or legally affiliated with Grace Baptist Church.

Therefore, Petitioner failed to establish that Grace Baptist Church occupied this parcel during the 2019 tax year.

In addition to not occupying this parcel for the 2019 tax year, Petitioner failed to establish that this property was used by the exemption claimant predominantly for religious services or for the teaching of religious truths and beliefs.

This is supported by both the exhibits of Petitioner and Respondent. Petitioner's Exhibit 7 is entitled 'Westside Angels Resale Financial Record.' This reflects that it was being used as a resale shop. Respondent's Exhibits 1, 2, 3, 4 and 5 are all photographs of the property that also show that this building was being used as a resale shop. The predominant use of this building was as a resale shop. This property was not used predominantly for religious services or for the teaching of religious truths and beliefs. Petitioner's witnesses testified that occasionally the property was used meeting of the officers of Grace Baptist Church. However, this was merely incidental use. The case law cited earlier in this Brief makes it clear that the predominant use of the property must be for religious services or for the teachings of religious truths and beliefs.

Therefore, Petitioner has failed to prove by a preponderance of the evidence that this property was occupied by Grace Baptist Church, and it also failed to prove that this property was being used predominantly for religious services or for the teachings of religious truths for the 2019 tax year. Therefore, this parcel is not entitled to a religious exemption under MCL 211.7s for the 2019 tax year."

4. "This parcel [i.e., Parcel No. 69-010-005-200-050-00] was used as an offsite Women's dorm for the 2019 tax year. The same standards apply to this parcel as were listed for Parcel 69-010-005-200-045-00.

   Exemption statutes must be strictly construed in favor of the taxing unit.

   The party seeking the exemption must prove by a preponderance of the evidence that it is entitled to an exemption.

   The property must be owned and occupied by the exemption claimant[.]

In order to qualify for an exemption under MCL 211.7 as a church, the exemption claimant must prove that the property was being used predominantly for religious services or for the teachings of religious truths for the 2019 tax year.

Petitioner fails to meet the requirements that the property was occupied by the exemption claimant and that it was used predominantly for religious services or for teaching religious truths.

Respondent will address the two issues of whether the property was occupied by Grace Baptist Church and whether it was used predominantly for religious services or for the teaching of religious truths.

First, the Petitioner failed to prove that it occupied this parcel for the 2019 tax year.

Petitioner did present testimony that the property was being used as an offsite women's dorm during the 2019 tax year. Petitioner also provided P's Exhibit 6 which listed the Grace Baptist College Enrollment for 2017 (page (1), 2018 (page 2) and the Spring of 2019 (page 3).

If this were the only building on this parcel, then this may be sufficient to establish that the parcel was occupied by Grace Baptist Church for the 2019 tax year. However, there were 3 similar size buildings located on this parcel and only this building was being occupied by Grace Baptist Church. The testimony of Petitioner's witness was that the other two buildings were vacant and not being used. The entire property must be occupied and used in order to qualify for an exemption under 7s. Since the majority of the 3 buildings were sitting vacant for the 2019 tax year, the parcel that comprises all 3 buildings is not entitled to an exemption. Since two of the three buildings were sitting vacant, they were not being used predominantly for religious services or for teaching religious truths.

In regards to the 3rd parcel that housed the offsite women's dorm, this also was not being used predominantly for religious services or for the teachings of religious truths.

Respondent's Exhibit 6 shows part of the women's dorm. The photographs were taken by Jason Woodcox, assessor for Bagley Township, on December 12, 2018 which would be applicable for the 2019 tax year. The dorm was made available by Pastor Jon Jenkins who came to allow inspection of the facilities. The notes on the Exhibit were also made by Jason Woodcox and they state in part as follows:

'The rest of the building was locked up and empty. The heating system was pretty much shot. The floor vents have all been taken up and the crawlspace was

completely exposed.

The other dorm (the men's dorm) had been mothballed for a couple of years. When the school moved over to the church facility on Townline Road (2016?), all the buildings were closed down except for the girl's dorm.'

This supports Respondent's contention that this parcel was not occupied by the exemption claimant as the majority of the buildings 'had been mothballed for a couple of years.'

Respondent's Exhibit 7 is another photograph taken on December 12, 2018 by Jason Woodcox showing part of the main building and it appears to be empty. Respondent's Exhibit 8 also was taken on December 12, 2018 and also shows part of the main building that appears to be empty. Respondent's Exhibit 9 also was taken on December 12, 2018 and this also shows part of the main building that appears to be empty. These photographs also show that the majority of this building that housed the women's dorm was not occupied by Grace Baptist Church.

In addition to the property not being occupied by the exemption claimant for the 2019 tax year, it was not used predominantly for religious services or for the teaching of religious truths. The part that was being used was being used as a women's dorm. Petitioner's witnesses testified that occasionally there were prayers said there or meetings with counselors. This was an incidental use. The predominant use was that of an offsite women's dorm (residence). That is not sufficient to be entitled to an exemption under 7s. The predominant use must be for religious services or for the teachings of religious services.

The case law cited in this Brief support this finding. The main case cited by Respondent is that of *Congregation Yagdil Torah v City of Southfield.* The Court of Appeals case is No. 314735 (2014) and is attached hereto as R Case #4. Also attached hereto is the original Tax Tribunal case involving *Congregation Yagdil Torah v City of Southfield, MTT Docket No. 382349 (2012).* See R's Case #5.

This case is virtually identical in facts to the subject case. In the *Congregation Yagdil Torah* case the property was an offsite women's dorm. This is the same factual setting as the subject case involving Parcel 69-010-005-200-050-00. In the subject case, one of the buildings was used as a women's dorm for the 2019 tax year. The Petitioner's witnesses testified that the main purpose of this building was that as a women's dorm and that occasionally it was also used for prayer or for counseling. This was also true in the *Congregation Yagdil Torah* case. In fact, in that case, classes were held at the house at 7:45 p.m. and the students observe religious services at the house on Friday nights.

The Court of Appeals held at page 7 as follows:

'MCL 211.7s, which must be strictly construed in favor of the taxing authority, *Institute in Basic Life Principles, Inc, 217 Mich App at 12,* only allows for an exemption when the property is 'predominantly' used for holding religious services or teaching religious truths and beliefs. Accordingly, the issue is not whether observances take place, but whether teaching is the predominant function of the subject property. Because the vast majority of the students' classes and religious services take place at the off-site synagogue, the subject property is not used 'predominantly for religious services or for teaching the religious truths and beliefs' of petitioner, MCL 211.7s, and, therefore, it is not eligible for a tax exemption as a house of public worship.'

This quote was cited earlier in this Brief, but Respondent is citing it again as this is the main defense of Respondent. The Court of Appeals held that it is used primarily as a residence. The primary use of this parcel is that of a women's dorm (residence). The test is whether the subject parcel is predominantly used for the holding of religious services or teaching religious truths and beliefs. Since the subject parcel is not used predominantly for the holding of religious services or teaching religious truths and beliefs, it does not qualify for an exemption under MCL 211.7s."

5. ". . .The resale shop . . . is not occupied by Grace Baptist Church. It is occupied by Westside Angels which is a separate legal entity. Petitioner has failed to provide any evidence or testimony to show that Westside Angels is legally a part of or legally affiliated with Grace Baptist Church. The Financial Record of Westside Angels (P's Exhibit 7) is not dated and does not show if any of this information is applicable to the 2019 tax year. It merely states that Westside Angels opened on May 6, 2017. This would indicate that it applied to 2017 and not to tax year 2019. It is also not authenticated by anyone from Grace Baptist Church or Westside Angels to testify as to how the document was prepared and who prepared it and what authority that person had to prepare this document. It shows donations to Grace Baptist Church which would indicate that it is not a part of Grace Baptist Church or a specific funding mechanism of Grace Baptist Church as you don't donate to yourself[.] Also, donations were made to other entities. Grace Baptist Church cannot donate to itself.

   This parcel is being used primarily as a resale shop. The predominant use of this parcel is not for holding religious services or for teaching religious truths and beliefs.

   Therefore, the resale shop does not qualify for a religious exemption under MCL 211.7s.

   . . . The women's dorm is not occupied by Grace Baptist Church. Two of the 3 buildings were shut down and mothballed in 2017 as per the statement of Pastor

> Jon Jenkins to Jason Woodcox during the inspection of the building. See Respondent's Exhibits.
>
> 6. Respondent's Exhibits 6, 7, 8, 9 and 10 were taken on December 18, 2018 and show that most of the building housing the women's dorm is empty and not being used.
>
> That portion of the building that is occupied and used is occupied and the primary use is as residence as a women's dorm. The predominant use of this parcel is not for holding religious services or for teaching religious truths and beliefs.
>
> Therefore, the women's dorm does not qualify for a religious exemption under MCL 211.7s."

In Response to Respondent's Supplemental Brief, Petitioner claims that:

> ". . . after claiming that 'it was deprived of a meaningful opportunity to address the legal issues,' the Township makes the exact same legal arguments that it made in its Respondent's Exceptions to Proposed Opinion and Judgment at pages 12 – 23 (Docket #58) and in its Motion for Rehearing at pages 6 – 13. Now, for the third time, with the same legal arguments that it made twice before, the Township – somehow – expects a different result. Because the Township is making the same argument that it made twice before, it cannot reasonably be said that the Township was 'deprived of a meaningful opportunity to address the legal issues regarding Petitioner's eligibility under' MCL 211.7s, because those arguments were already made, heard, and denied by the Tribunal on two previous occasions."

Petitioner also claims that:

1. "The relevant standard for determining whether multiple parcels of land are tax exempt pursuant to MCL 211.7s was established by the Michigan Court of Appeals in *Institute of Basic Life Principles v Watersmeet Township*.[2] There, the court held:

> > 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

[2] As cited by Petitioner, see *Institute in Basic Life Principles v Watersmeet Twp*, 217 Mich App 7, 19 (1996).

> 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. [Emphasis in the original.]

Despite the fact that the Michigan Court of Appeals determined that the correct standard is whether 'the entire property was used in a manner consistent with the purposes of the owning institution,' the Township goes into a detailed 'quantum of use test' analysis in Respondent's Brief, just as it did twice before in Respondent's Exceptions to Proposed Opinion and Judgment and in its Motion for Rehearing. *IBLP,* 217 Mich. App. at 19. The Township is applying the wrong standard, and – for that reason – the argument the Township is now making was previously denied by the Tribunal on two occasions."

2. "The Townships' arguments are rooted in cases that predate *Institute in Basic Life Principles,* which was decided by the Michigan Court of Appeals in 1996. The Township also relies on unreported cases that have no precedential value. Rather than basing its arguments on the current, relevant legal standard, the Township cites *St. Paul Lutheran Church v City of Riverview, a* case from 1988. 165 Mich App 155 (Mich App 1988). The Township also cites *Michigan Christian Campus Ministries v City of Mount Pleasant,* which is an even older case, having been decided by the Court of Appeals in 1982, fourteen years before its decision in *IBLP*[,] 110 Mich App 787 (Mich App 1982).

   The Township's analysis and the conclusions at pages 5 – 7 of Respondent's Brief, are based on *Michigan Christian Campus Ministries,* and, therefore, are not valid. As the Court of Appeals established in *Institute in Basic Life Principles,* the relevant standard is 'whether the entire property was used in a manner consistent with the purposes of the owning institution.' *IBLP*, 217 Mich App at 19. Rather than applying that standard, the Township applies 'the Quantum of Use Test,' which was specifically rejected by the Court of Appeals. *Id*[.] Nothing said by the Respondent at pages 5 – 7 of Respondent's Brief shows that the parcels in question were not used 'in a manner consistent with the purposes of the' Church. Rather, the Township focuses on its allegation that the parcels were 'occasionally' used for one purpose or another – clearly a quantum of use test. However, Pastor Hagland's testimony at pages 15:23 – 53:23 of the *Grace Baptist Church of Gaylord v Bagley Township* Hearing Transcript (Docket #56 'Transcript') establishes that the parcels in question were 'used in a manner consistent with the purposes of the owning institution.' *IBLP,* 217 Mich App at 19. As such, nothing the Township said at pages 5 – 7 of its Respondent's Brief changes the Tribunal's correct finding that the parcels in question were used by the Church in a manner consistent with its purposes and were, therefore, entitled to tax exemption for 2019.

At pages 7 – 22 of its Respondent's Brief, the Township uses two unpublished opinions as the basis of its argument. In fact, the Township describes *Congregation Yagdil Torah v City of Southfield* as the 'main case relied on by Respondent.' (Respondent's Brief at 8.) The two specific unpublished opinions that the Township relies on are: *Congregation Yagdil Torah v City of Southfield,* Court of Appeals No. 314735 (2014); and *Congregation Mishkan Israel Nuscach H'ari v City of Oak Park,* Court of Appeals No. 306465 (2012). 'It is undisputed that an unpublished opinion of the Court of Appeals has no precedential value, should not be cited, and that trial courts and administrative tribunals are not `bound' by decisions without precedential value.' *Forgach v George Koch & Sons Co,* 167 Mich App 50, 56 (Mich App 1988). With respect to unpublished opinions, MCR 7.215(C)(1) states: 'An unpublished opinion is not precedentiallv binding under the rule of stare decisis. Unpublished opinions should not be cited for propositions of law for which there is published authority. If a party cites an unpublished opinion, the party shall explain the reason for citing it and how it is relevant to the issues presented . . . .' MCR 7.215(C)(1) (Lexis 2022). Despite being required to state the reason for citing these unpublished opinions, the Township gives no reason for citing *Congregation Yagdil Torah* and *Congregation Mishkan Israel Nuscach H'ari* as the basis of its argument, when binding precedent exists. Further, the unpublished opinions the Township cites are distinguishable. *Congregation Mishkan Israel Nuscach H'ari* involved a single 'developed parcel of land on a city street.' Court of Appeals No. 306465 at 4. *Congregation Yagdil Torah* involved 'a single-family residence located at 15629 Jeanette Street in Southfield.' Court of Appeals No. 314735 at 1. Here, the Church filed a Multiple Parcel Petition (Docket # 1) seeking tax exemption for more than one parcel. Despite the fact that the instant case[] concerns multiple parcels – and for that reason the *IBLP* precedent applies – the Township cites two unpublished opinions with no precedential value, concerning single parcels that are inapplicable. The Township also cites the Tribunal's decision in *Congregation Yagdil Torah v City of Southfield,* which is even less binding than an unpublished Court of Appeals decision. MTT Docket No. 382340 (2012). In summary, the law cited as the basis of the Township's Respondent's Brief is entirely without precedential value.

At pages 7 – 20 of Respondent's Brief, the Township argues – contrary to IBLP – that the appropriate standard for determining whether the Church is entitled to tax exemption for its parcels is whether 'the property is 'predominantly' used for holding religious services or teaching religious truths and beliefs.' (Respondent's Brief at 7.) Over and over again on pages 7, 8, 9, 15, 16, 17, 19, and 20, the Township argues that the property was not used predominately for religious services or for teaching of religious truths. At pages 10 – 16, the Township makes this argument with respect to parcel 69-010-005-200-045-00, and at pages 16 – 20, the Township makes the same argument for parcel 69-010-005-200-050-00. While the Township repeatedly makes this argument, nowhere is there any showing that Pastor Hagland's testimony – that the property was used for the purposes for which the church was incorporated – was incorrect.

(Transcript at 15:23 – 53:23.) *IBLP* only requires the Church to show that the property was 'used in a manner consistent with the purposes of the owning institution.' *IBLP,* 217 Mich App at 19. Since IBLP only requires consistency 'with the purposes of the owning institution' and not that the property be used for the actual purposes of the owning institution, *IBLP* establishes a lower bar than the standard the Church was arguing at the February 23, 2021 hearing. Given Pastor Hagland's unrefuted testimony, the Church's entitlement to tax exemption for 2019 is clearly established. Nothing in the [Respondent's] Brief changes that fact.

The Township concludes its Respondent's Brief – the same argument it made on two previous occasions – with a summary concerning parcel 619010-005-200-045-00 on page 21 and a summary concerning parcel 69-010005-200-050-00 on page 22. The Respondent's argument on page 21 primarily consists of evidentiary arguments concerning a single exhibit, a financial document. This argument has nothing to do with whether the Church met the *IBLP* standard. Similarly, on page 22, nothing the Township argues shows that the property was not being 'used in a manner consistent with the purposes of the owning institution.' *Id*[.]"

3. "The Township makes a significant issue over the fact that the Church was not seeking an exemption pursuant to MCL 211.7s during the hearing conducted on February 23, 2021. In fact, this was the primary basis of its Motion for Rehearing. (Motion for Rehearing at 2 – 6.) It is interesting to note, however, that the reason the Church was not seeking an exemption pursuant to the religious exemption statue is that the Township's Assessor, its Board of Review, and its legal counsel incorrectly advised the Church, over and over again, that it was not entitled to tax exemption pursuant to that statute, just as the Township argued in its Respondent's Brief. Now that the Tribunal made a correct determination in its POJ and FOJ, the Township once again argues that the Church cannot succeed, because it did not make an argument at the February 23, 2021 hearing that the Township told the Church it could not win. In the process, the Township seeks to apply the same incorrect legal standard by which it advised the Church it was not entitled to tax exemption under MCL 211.7s. Regardless of the Township's improper maneuvering, the Church met the standard established in *IBLP* and the parcels in question are entitled to tax exemption for 2019."

The Tribunal has reviewed the Supplemental Brief, the Response, and the case file and finds that the properties are exempt under MCL 211.7s for the 2019 tax year.

Respondent contends that the standard used to decide if Petitioner occupied the subject properties for purposes of receiving an exemption under MCL 211.7s is that the predominant use of the parcels must be for holding religious services or for teaching

religious truths and beliefs. Respondent cites *Michigan Christian Campus Ministries, Inc* v *City of Mount Pleasant* to bolster its argument. Respondent also cites *Congregation Mishkan Israel Nuscach H'ari v City of Oak Park* and *Congregation Yagdil Torah v City of Southfield*, which are both unpublished opinions. Unpublished opinions have no precedential value, and the Tribunal is not bound by decisions without precedential value.[3] Therefore, the Tribunal gives no weight to the two unpublished opinions. *Michigan Christian Campus Ministries*, however, is a published opinion. Thus, it must be taken into consideration.

Michigan Christian Campus Ministries contains facts strikingly similar to the present case. In *Michigan Christian Campus Ministries*, Petitioner owned a house in which selected students lived together in a Christian atmosphere.[4] The house was under the direction of an ordained church minister, who used an office to conduct religious counseling and administrative duties.[5] The Court of Appeals upheld the Tribunal's decision that Petitioner did not qualify for the exemption because the majority of the rooms in the house were devoted to living space for the residents and although religious services were conducted at times, the use of the property as a residence was continuous.[6]

Petitioner argues for a less stringent standard. Petitioner argues the correct standard is whether the entire property was used in a manner consistent with the purposes of owning the institution. Petitioner cites *Institute of Basic Life Principles v Watersmeet Township* to advance this position. In *Institute of Basic Life Principles*, the Court of Appeals discusses the quantum of use test that Respondent claims is the correct standard. The Court of Appeals rejected the quantum of use test in *National Music Camp v Green Lake Township*. The Court held that the quantum of use test was

[3] See *Forgach v George Koch & Sons Co*, 167 Mich App 50, 56 (1988). Although unpublished opinions can still provide guidance, guidance is unnecessary in the instant case given precedential authority to the contrary, as indicated herein. See *Cox v Hartman*, 322 Mich App 292, 307; 911 NW2d 219 (2017). See also TTR 215 and MCR 7.215(C)(1).
[4] See *Michigan Christian Campus Ministries Inc v City of Mount Pleasant*, 110 Mich App 787, 790 (1981).
[5] *Id.*
[6] *Id.* at 793.

"stringent, rigorous, and extreme."[7] The Court in *Institute of Basic Life Principles* then adopted the test of whether the entire property was used in a manner consistent with the purposes of owning the institution.[8]

The Tribunal thus adopts the standard used in *Institute of Basic Life Principles* to decide if Petitioner is entitled to the exemption under MCL 211.7s, as *Institute of Basic Life Principles* is a more recent than the case cited by Respondent. Therefore, the question is whether the subject properties were used by Petitioner in a manner consistent with owning the institution.

> The church's mission, as testified by Pastor Hagland, is as follows:
>
> To walk together in Christian love; to strive for the advancement of the church in knowledge, holiness, and comfort; to promote its prosperity in spirituality; to sustain its worship, ordinances, discipline, and doctrines; to give it a sacred preeminence over all institutions of human origin and to contribute cheerfully and regularly to the support of the ministry, the expenses of the church, the relief of the poor, and the spread of the gospel through all the nations.'

As a result, the church is entitled to the exemption under MCL 211.7s if the activities conducted on the subject properties support the above mission of the church. As indicated herein, the activities do support the church's mission.

Parcel No. 69-010-005-200-045-00 was used for a resale shop. The shop took donations and either sold them to the general public, other church ministries, or to the poor. The funds taken in were distributed to the church, the college, the Christian school, or another non-profit that was in line with the church's covenant. The church also used the property for Trunk or Treat, which was an event to give back to the community. As such, Parcel No. 69-010-005-200-045-00 was used in a manner consistent with owning the church since the resale shop was formed, although *in artfully*, by the church to support the church's mission of contributing to relief of the poor and supporting the ministry.

Parcel No. 69-010-005-200-050-00 was used in 2018 as dorms for the college and for part of 2019 as a dorm for the college. There was also counseling conducted on

---

[7] See *Institute of Basic Life Principles v Watersmeet Township*, 217 Mich App 7, 18 (1996) (quoting *National Music Camp v Green Lake Township*, 76 Mich App 608, 611 (1977).
[8] *Id.* at 19.

the parcel and weekly bible studies. The purpose of the dorm was to house the students in a Christian environment, where the students can hear the word of the Gospel and advance their knowledge of their faith by not only living in this environment, but also having access to counseling and bible studies. In addition, it was testified that the counseling was not just limited to the students, but other church members as well. Therefore, Parcel No. 69-010-005-200-050-00 was used in a manner consistent with owning the church.

Given the above, the Tribunal once again finds that the properties are **EXEMPT** under MCL 211.7s **for the 2019 tax year**. As a result, the properties' TCV, SEV, and TV for that tax year are as follows:

Parcel Number	Year	TCV	SEV	TV
69-010-005-200-045-00	2019	N/A	N/A	$0.00

Parcel Number	Year	TCV	SEV	TV
69-010-005-200-050-00	2019	N/A	N/A	$0.00

The Tribunal also finds that the December 27, 2021 Order vacating the October 14, 2021 FOJ should be **SET ASIDE** and FOJ and August 8, 2021 POJ **INCORPORATED**, by reference, herein.

IT IS SO ORDERED.

JUDGMENT

This is a proposed decision and not a final decision.[9] As such, no action should be taken based on this decision.

After the expiration of the time period for the opposing party to file a response to the exceptions, the Tribunal will review the case file, including the POJ and all exceptions and responses, if any, and:

1. Issue a Final Opinion and Judgment (FOJ) adopting the POJ as the final decision.
2. Issue an FOJ modifying the POJ and adopting the Modified POJ as the final decision.

[9] See MCL 205.726.

3. Issue an Order vacating the POJ and ordering a rehearing or such other action as is necessary and appropriate.

EXCEPTIONS

This POJ was prepared by the Michigan Office of Administrative Hearings and Rules. The parties have 20 days from the below "Date Entered by Tribunal" to notify the Tribunal and the opposing party in writing, by mail or by electronic filing, if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions). Exceptions are limited to the evidence submitted prior to or at the hearing and any matter addressed in the POJ. There is no fee for filing exceptions.

The opposing party has 14 days from the date the exceptions were mailed to that party to file a written response to the exceptions.[10]

A copy of a party's written exceptions or response must be sent by mail or electronic service, if agreed upon by the parties, to the opposing party and proof must be submitted to the Tribunal that the exceptions or response were served on the opposing party.

Exceptions and responses filed by *facsimile* will not be considered.

Entered: September 14, 2022 By Peter M. Koglin
AJS/pmk

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

[10] See MCL 205.762(2) and TTR 289(1) and (2).