



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

Mt Zion Temple,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 21-001391

Waterford Township,
Respondent.

Presiding Judge
Jason C. Grinnell

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

This case involves an appeal of Respondent's denial of Petitioner's claim for exemption from ad valorem property taxation for the 2021 tax year under MCL 211.7. Tax years 2022 and 2023 are automatically included pursuant to MCL 205.737(5)(a). The subject property is a single building, containing 62,933 square feet on 1.47 acres of land with a parking lot. The parties' filed a Joint Stipulation of Facts on November 8, 2022, indicating that the building contains (a) a shop selling and renting skateboards, scooters, and accessories; (b) a café area with kitchen buildout and seating areas; (c) a skatepark with ramps, rails, a halfpipe, and other similar items (consisting of approximately 11,000 square feet); (d) a two-story area built out as a gymnasium with basketball courts that can be converted into tennis courts, pickleball courts, or wallyball courts; (e) two locker rooms that were closed and unusable as of tax date; (f) a play room; (g) a meeting room; (h) a racquetball court; (i) a softball practice room; and (j) a one-story area of approximately 1,680 square feet, containing offices and three meeting rooms.

The Tribunal issued an Order Partially Granting Petitioner's Motion to Amend Scheduling Order on November 28, 2022, extending the filing deadlines for briefs in support of the respective parties' claims to December 23, 2022. On December 27, 2022, each party filed a brief in support of its claims and Respondent also filed a motion requesting that the Tribunal enter summary disposition in its favor pursuant to MCR 2.116(C)(10) and dismiss the above-captioned case. Each party filed a response opposing the other's brief on February 3, 2023.

The Tribunal has reviewed the briefs, Motions, responses, and the evidence submitted and finds that granting Respondent's Motion for Summary Disposition under MCR 2.116(C)(10) is appropriate. Petitioner contends that a hearing is necessary to

place into the record the evidence necessary to satisfy the elements of a charitable exemption, however the Tribunal finds that a hearing is not necessary nor required in this case. Petitioner's counsel submits that because the parties were not able to reach an agreement as to all material facts, Petitioner is entitled to a hearing because he contends there are facts in dispute. The Tribunal finds that there are no outstanding issues of material fact relative to the exemption issue and that issue has been thoroughly briefed by the parties.

RESPONDENT'S CONTENTIONS

In the motion filed pursuant to MCR 2.116(10), Respondent contends that there are no genuine issues of material fact as to Petitioner's eligibility for the requested exemption, and that they are entitled to judgment as a matter of law. Respondent contends that Petitioner's "rules and by-laws" confirm its singular religious purpose and there is no mention of a recreational purpose or anything else that would involve a skate park, fitness center, pickleball courts, basketball courts, or other similar spaces. The subject property is used by individuals and groups and could also be occupied on a long-term basis under a facility usage agreement. Petitioner maintains a multi-page document addressing the manner in which the subject is used and governing how it is used by individuals, entities, and for private events. During the 2020 year, the only semi-regularly held event that could be remotely characterized as religious at the subject property was a 30-minute youth service held on Saturdays prior to Teen Outreach. Teen Outreach is where a majority of the property is open for use for a reduced fee if the teen attended the service. Respondent contends that this activity generated only 3.5% of Petitioner's annual revenue with the largest revenue generator being the skate park entrance fees. There is also a 1,600 square foot, two-story area known as the Oasis that has its own entrance and is used for counseling and other meetings. Respondent contends that Petitioner does not meet the three requirements in order for real property to be exempt: 1) ownership and occupancy; 2) by a nonprofit charitable institution; and 3) solely for the purposes for which the nonprofit charitable institution was incorporated.

Regarding the occupancy of the subject property, Respondent contends that the only area of the 62,933 square foot property that is set aside for Petitioner is the 144 square foot office area. Other areas of the property were either closed, unusable, or rented to and used by third party individuals in return for payment. Respondent cites *Liberty Hill Housing Corp v City of Livonia* stating that a "regular physical presence" cannot be maintained in "property that it leased to others and did not physically reside in."¹ Simply existing in one area of the property and occasionally walking through the other areas is not sufficient to occupy the entire property.

To qualify for a charitable property tax exemption a taxpayer must satisfy the following six factors set forth in *Wexford*: 1) must be a nonprofit institution; 2) is one that is organized chiefly, if not solely, for charity; 3) does not offer its charity on a

¹ *Liberty Hill Hous Corp v City of Livonia*, 480 Mich 44, 57 and 58-59; 746 NW2d 282 (2008).

discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a “charitable institution” serves any person who needs the particular type of charity being offered; 4) brings people’s minds or hearts under the influence of education or religion; relieves people’s bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government. 5) can charge for its services as long as the charges are not more than what is needed for its successful maintenance; 6) need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a “charitable institution” regardless of how much money it devotes to charitable activities in a particular year.² Respondent believes factors one, three and four are relevant. Petitioner is organized as an ecclesiastical corporation under MCL 450.1 *et seq.* Pursuant to MCL 450.178 all entities organized under that act “shall be a non-profit corporation and subject to the provisions of this act relating to non-profit corporations generally.” However, there is nothing in Petitioner’s Articles of Incorporation or Bylaws that would prevent a profit from being collected and paid to the owners of the entity. Petitioner’s purpose is religious and that falls within the definition of charity through “bringing their minds or hearts under the influence of . . . religion.” A review of the subject’s financials and actual use indicates that the primary use and revenue generator is the zero gravity skatepark, which has nothing to do with religion. In addition, Petitioner’s testimony to Respondent’s Board of Review characterized the Saturday night teen activity as more of a hang out to keep kids off the street than a religious activity. Even if the operation of the subject property were to be characterized as charitable, the fees charged for use of the property are at or close to market rates for similar properties. There is no connection between the fees charged to use the property and a religious purpose. Petitioner’s charitable purpose and the restrictions placed on the use of the property do not have, and cannot have, a reasonable relationship as they are fundamentally different. There is no charity offered at the subject property and the restrictions on the use of the property are not reasonably related to Petitioner’s charitable purpose. Petitioner does not provide a gift within the definition of charity at this property.

Petitioner does not occupy the subject property solely for the purposes for which it was incorporated. Petitioner was clearly incorporated for only religious purposes and does not occupy the property for that purpose. Respondent states denial of the exemption is necessary under the Court of Appeals standard of “necessary to further the purposes for which the charitable institution was incorporated”.³ Occupancy by Petitioner’s building manager and pastor to oversee the recreational use of the property shows that the occupancy is not necessary to further Petitioner’s religious purpose. Most of Petitioner’s religious events take place at other properties owned by Petitioner, not at the subject property. Also, the addiction recovery counseling provided by

² *Wexford Med Group v City of Cadillac*, 474 Mich 192, 215; 713 NW2d 734 (2006).

³ *Salvation Army v Addison Township*, Unpublished per curiam opinion of the Court of Appeals issued March 25, 2021 (Docket No. 353210).

Petitioner in the Oasis part of the subject is not within the scope of Petitioner's purely religious purpose.

PETITIONER'S RESPONSE TO RESPONDENT'S CONTENTIONS

Respondent fails to acknowledge that the subject property is operated by a charitable non-profit corporation to spread its religious beliefs, relieve bodies from disease, suffering, and constraint, and assisting people to establish themselves for life. As a matter of Michigan law, an ecclesiastical corporation is a non-profit corporation and Petitioner is a non-profit corporation subject to the restrictions in MCL 450.2108 as a matter of law. Respondent also misapplied the law regarding the occupancy of the property as well as whether Petitioner's charges for usage render it a charitable use. Petitioner states that Pastor Dan Niewoit's second affidavit establishes that his presence and occupancy of the subject property are essential to the spreading of the religious truths that is one of the charitable purposes of the ownership and operation of the subject. Further, Respondent misapplies several of the *Wexford* standards laid out by the Michigan Supreme Court. First, Respondent argues that because Petitioner charges "market" rates, it could not possibly be providing charity. However, in *Baruch SLS v Tittabawasee Twp*, the Supreme Court confirmed that a charitable institution can charge for its services as long as the charges are not more than what is needed for its successful maintenance.⁴ Respondent fails to recognize the amendment to Petitioner's Articles of Incorporation which provides: "We reserve the right to purchase or acquire by gift, devise, bequest, or otherwise, either directly or as by trustee, and to so own, hold in trust, use, sell, convey, mortgage, lease, or otherwise dispose of any real or personal property located or being in the State of Michigan or any other state or territory of the United States of America, or in any other part of the world, **also to engage and conduct educational, benevolent and charitable work**, establish and carry on schools, also to publish and sell or otherwise distribute tracts, periodicals and other literature to get the work out." [Emphasis added.] Petitioner contends that every use of the property satisfies one of the elements of the fourth *Wexford* factor. The logbook provided by Pastor Niewoit establishes that the property is used to bring the hearts and minds of individuals under the influence of religion.

PETITIONER'S CONTENTIONS

Petitioner contends that it is entitled to a charitable exemption under MCL 211.7o as it satisfies all three elements necessary for an exemption: 1) the subject property is owned and occupied by Petitioner, 2) Petitioner is a nonprofit charitable institution, and 3) the property is occupied by Petitioner solely for the purposes for which Petitioner was incorporated.

Petitioner contends that it has a regular physical presence at the subject property as Pastor Niewoit regularly accesses all portions of the property as the building manager. Petitioner contends that it was organized as a nonprofit Michigan corporation

⁴ *Baruch SLS v Tittabawasee Twp*, 500 Mich 345; 901 NW2d 843 (2017).

and was organized chiefly for charity, as provided by the 2011 Certificate of Amendment to Petitioner's Articles of Incorporation. As the state constitution provides that the public health and general welfare of the people of the state are matters of public concern and directed laws be passed for the protection and promotion of public health, Petitioner contends that its community center for fitness activities as well as addiction recovery meetings and spiritual growth clearly lessens the burdens of the government in providing constitutionally mandated services. Petitioner does not discriminate in determining to whom its services are provided. Petitioner works to "bring people's minds or hearts under the influence of education or religion; relieve people's bodies from disease, suffering, or constraint; assists people to establish themselves for life." First, a part of Petitioner's charitable purpose is to support the spiritual growth of the users of the property. Second, the physical activities offered at the property are intended to relieve people's bodies from disease, suffering, and constraint. Finally, the addiction support services offered at the property are intended to assist individuals to establish themselves for life.

Petitioner contends that its use of the subject property for a charitable purpose exceeds that of the Petitioner in *Chelsea Health & Wellness Foundation v Twp of Scio*⁵, as in this case Petitioner seeks to influence the mind and body of the community. Petitioner meets the fifth and sixth *Wexford* factors as although Petitioner charges for its services, the charges are substantially less than what is needed for successful maintenance of the property. Lastly, Petitioner occupies the property solely for the purpose for which it was incorporated, which included, "to engage and conduct educational, benevolent and charitable work".

RESPONDENT'S RESPONSE TO PETITIONER'S CONTENTIONS

Petitioner's brief does not include any material facts or disputed facts, such that the Tribunal would be prevented from entering a Final Opinion and Judgment in this case. Petitioner fails to mention that the property was occupied as of the relevant date by third party users under a Facilities Use Agreement and fails to note the different areas of the property and what they are used for. The affidavit of pastor Dan Niewoit fails to state to what extent he occupied other areas of the property outside the 144 square foot office. The affidavits supplied by Petitioner indicate that the property was not acquired or operated for any religious purpose, but to provide fitness and community activities. Petitioner's affidavits include mere conclusory statements that are direct quotations from *Wexford*. Respondent contends that Petitioner was not organized, reorganized, or amended pursuant to the Michigan Nonprofit Corporation Act, MCL 450.2101 *et seq* but rather was organized under statutes specific to Ecclesiastical Corporations, MCL 450.178 to 186. Petitioner never denotes what its specific charitable purpose is. While Petitioner has a purpose (religious), and that purpose is charitable, the purpose and actual use of the property are disqualifying in this case. While Petitioner states that its operation as "a community center for fitness activities" lessens

⁵ *Chelsea Health & Wellness Foundation v Twp of Scio*, unpublished per curium opinion of the Court of Appeals, issued October 12, 2017 (Docket No. 332483).

the burdens of government in providing constitutionally mandated services, the largest revenue generator of the property is a skate park. Petitioner has not acknowledged that entry fees are a barrier to service at the property and has not proven that those restrictions have a reasonable relationship to its religious purpose. Respondent contends that *Chelsea Health* should not be considered by the Tribunal as it is a non-binding case and the claimant in that case had a purpose to promote health, wellness, and fitness and operated a health club. The direct tie between purpose and use of the property is not present in this case involving a fitness center owned by a religious entity. Respondent contends that providing physical exercise and personal wellness facilities (a skate park and fitness center) to members is not a burden of state government for which a charitable tax exemption is appropriate, and Petitioner cannot point to one regularly occurring religious use of the property that would bring hearts and minds under the influence of religion. Lastly, Respondent states that operating the subject at a loss is not an indication of charity. Petitioner's financials show annual compensation to one employee in excess of \$130,000 and there is no evidence as to what the minimum amount necessary for maintenance is. That a for profit competitor is able to operate in the same market while charging similar fees, and while presumably turning a profit, would indicate that the costs at the subject are not reflective of market. This case involves a religious entity, with a religious purpose, occupying a property for non-religious purposes.

STANDARD OF REVIEW

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.⁶ In this case, Respondent moves for summary disposition under MCR 2.116(C)(10).

MCR 2.116(C)(10) provides for summary disposition when “there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.”⁷ The Michigan Supreme Court, in *Quinto v Cross and Peters Co.*,⁸ provided the following explanation of MCR 2.116(C)(10):

MCR 2.116 is modeled in part on Rule 56(e) of the Federal Rules of Civil Procedure . . . [T]he initial burden of production is on the moving party, and the moving party may satisfy the burden in one of two ways.

First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. If the nonmoving party cannot muster sufficient evidence to make out its

⁶ See TTR 215.

⁷ *Id.*

⁸ *Quinto v Cross and Peters Co.*, 451 Mich 358 (1996) (citations omitted).

claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law.

In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10),(G)(4).

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.⁹

“A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.”¹⁰ In evaluating whether a factual dispute exists to warrant trial, “the court is not permitted to assess credibility or to determine facts on a motion for summary judgment.”¹¹ “Instead, the court’s task is to review the record evidence, and all reasonable inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial.”¹²

CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent’s Motion under MCR 2.116 (C)(10) and finds that granting the Motion is warranted. The General Property Tax Act (GPTA) provides “[t]hat all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation.”¹³ Because Petitioner is attempting to establish membership in an already exempt class, it is Petitioner’s burden of proof to establish by a preponderance of the evidence that it is entitled to each

⁹ *Id.* at 361-363. (Citations omitted.)

¹⁰ *West v General Motors Corp*, 469 Mich 177 (2003).

¹¹ *Cline v Allstate Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued June 21, 2018 (Docket No. 336299) citing *Skinner v Square D Co*, 445 Mich 153 (1994).

¹² *Id.*

¹³ MCL 211.1 *et seq.*

exemption.¹⁴ While the petition filed in this case states exemption is sought under the general umbrella of MCL 211.7, the briefs filed by Petitioner indicate Petitioner is appealing specifically under MCL 211.7o. MCL 211.7o creates an exemption for charitable institutions. It states, in pertinent part, that “real or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which that nonprofit charitable institution was incorporated is exempt from the collection of taxes under this act.” Consequently, there are three basic elements that must be satisfied in order to qualify for an exemption under MCL 211.7o:

1. The real property must be owned and occupied by the exemption claimant;
2. The exemption claimant must be a nonprofit charitable institution; and
3. The exemption exists only when the buildings and other property at issue are occupied by the claimant solely for the purposes for which the claimant was incorporated.¹⁵

The Tribunal agrees with Respondent that Petitioner has not completely satisfied all of the above factors so as to be eligible for the exemption. While it is undisputed that Petitioner owns the subject property, Petitioner has not established that it occupies the whole property. Affidavits filed by Petitioner indicate that Pastor Niewoit occupies a 144 square foot office in one part of the building and checks on other parts of the building in his capacity as building manager. Petitioner submitted pages from a Community Log Book documenting various counseling sessions held by Mr. Niewoit. While the log does not specify, it is presumed that the counseling took place in the office occupied by Mr. Niewoit and not in the skate park or other recreational facility space. The parties’ Stipulation of Facts indicated that the property is mostly used by the general public paying a “pay per use” activity fee or groups under a Facility Usage Agreement.

While nonprofit charitable institution is not defined in the statute, the Supreme Court used the following six factors in *Wexford* to determine if an organization is such:

- (1) A “charitable institution” must be a nonprofit institution.
- (2) A “charitable institution” is one that is organized chiefly, if not solely, for charity.
- (3) A “charitable institution” does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a “charitable institution” serves any person who needs the particular type of charity being offered.
- (4) A “charitable institution” brings people’s minds or hearts under the influence of education or religion; relieves people’s bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the

¹⁴ *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490, 494-495; 644 NW2d 47 (2002).

¹⁵ See *Liberty Hill Hous Corp v City of Livonia*, 480 Mich 44; 746 NW2d 282 (2008).

burdens of government.

(5) A “charitable institution” can charge for its services as long as the charges are not more than what is needed for its successful maintenance.

(6) A “charitable institution” need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a “charitable institution” regardless of how much money it devotes to charitable activities in a particular year.¹⁶

Regarding factor 1, the Tribunal finds that Petitioner is an ecclesiastical corporation and therefore, is a non-profit corporation subject to the restrictions in MCL 450.2108 as a matter of law, therefore Petitioner satisfies this factor.

Regarding factor 2, Petitioner must be organized chiefly if not solely for charity.¹⁷ The Tribunal finds the Court’s reasoning in *Boyne Area Gymnastics* to be persuasive.¹⁸ In *Boyne Area Gymnastics*, the petitioner’s articles stated that it was “organized exclusively for charitable, religious, educational, and scientific purposes”, however, the articles also generally stated that the petitioner was “organized to teach gymnastics, dance, and physical fitness.”¹⁹ As such, the court found the petitioner was not organized chiefly or solely for charity. Petitioner contends that because it added the phrase “. . . also to engage and conduct educational, benevolent and charitable work, . . .” to its amended articles of incorporation in 2011, it is a charitable corporation. However, this is the only reference to charitable work found in all of Petitioner’s founding documents and nowhere is it specified what type of charitable work is performed by Petitioner. Rather, the specific purposes indicated all relate to Petitioner being a religious organization. While the affidavits filed by Petitioner indicate the subject property is operated to benefit the physical and spiritual growth of the community, these purposes are not specified in Petitioner’s Articles of Incorporation or Bylaws. As such, Petitioner does not satisfy *Wexford* factor 2.

Regarding factor 3, Petitioner claims that it does not discriminate as to who may use its facilities, while Respondent argues the requirement of a fee for use of the skate park and fitness center could be considered discriminatory. However, factor 3 is intended to exclude organizations that discriminate by imposing purposeless restrictions on the beneficiaries of the charity.²⁰ It appears from Petitioner’s financial information that it does not collect fees for the counseling services provided by Pastor Neiwoit. It is not clear what, if any restrictions are placed on those receiving these services, therefore, this factor does not weigh either in favor of or against Petitioner being a charitable institution.

¹⁶ *Wexford Med Group v City of Cadillac*

¹⁷ *Id.*

¹⁸ *Boyne Area Gymnastics Inc v City of Boyne City*, unpublished per curiam opinion of the Court of Appeals, issued May 15, 2012 (Docket No. 303590).

¹⁹ *Id.*

²⁰ *Baruch SLS, Inc v Tittabawassee Twp*, 500 Mich 345; 901 NW2d 843 (2017).

Petitioner argues that it satisfies factor 4 as it brings people's minds or hearts under the influence of religion. While this may be true of the Saturday evening teen service and occasional counseling sessions conducted at the subject, the evidence indicates that the major use of the subject property is as a skate park and fitness center. Petitioner relies on *Chelsea Health and Wellness v Twp of Scio* in arguing that it is lessening a burden of government by providing a fitness center. The Tribunal finds *Chelsea Health and Wellness* is not persuasive authority in this matter because the facts of this case are distinguishable. The Petitioner's purpose of promoting health, wellness, and fitness in that case was directly related to the operation of a fitness center.²¹ Here, Petitioner's stated purpose is the furtherance of Petitioner's religious organization. While Petitioner also contends that it lessens the burden of government, the Tribunal agrees with Respondent that providing physical exercise and personal wellness facilities to members through a skate park and fitness center is not a burden of state government for which a charitable tax exemption is appropriate. The services offered at the subject property are recreational and not a public health program. Unlike the *Chelsea Health and Wellness* petitioner, Petitioner here did not undertake "measures designed to improve the health of the population within its service area" and there is no indication that providing a skatepark and other recreational facilities was "designed to improve the health of the population."²² Accordingly, the Tribunal concludes that Petitioner does not satisfy the fourth *Wexford* factor.

Petitioner contends that it meets factors 5 and 6 because the revenue it receives from fees charged for the various activities at the subject result in a loss. Petitioner contends that its financial support of the property beyond the fees collected is charity. The Tribunal finds that Petitioner's revenue information indicates the fees are not more than what is needed for successful maintenance. Therefore, the fifth *Wexford* factor does not weigh against Petitioner being a charitable institution.

Regarding factor 6, the only activity for which reduced fees are offered is the Teen Outreach activity on Saturday nights. The majority of people using the subject property do not receive any benefit they do not pay for. As Respondent indicated, the fees charged by Petitioner are similar to fees charged by other fitness centers in the area, which does not distinguish the subject as a charitable institution. Although Petitioner did on occasion provide the use of the subject property at a discount, "the waiving of fees to some members of the public is incidental to the primary purpose for organizing."²³ Therefore, *Wexford* factor 6 is not satisfied as the overall nature of the institution is not charitable.

Overall, considering the six factors set forth in *Wexford*, the Tribunal concludes that Petitioner was not a charitable institution during the tax years at issue. Petitioner's activities provide some fitness benefits generally and there is some charitable aspect to

²¹ *Chelsea Health and Wellness Foundation v Scio Twp*, unpublished opinion per curiam issued by the Court of Appeals on October 12, 2017 (Docket No. 332483).

²² *Id.*

²³ *Boyne Area Gymnastics v City of Boyne City*.

Petitioner's activities at the subject property, however, that does not render its entire nature charitable. On the whole, Petitioner's purpose is as a religious institution.

Lastly, the third part of the exemption requirement under MCL 211.7o(1), whether the subject property is occupied by the claimant solely for the purposes for which the claimant was incorporated, has not been met by Petitioner. While the affidavit of Loren Covarrubias states the subject property was purchased "in order to benefit the community and public by providing fitness and community activities that would not otherwise be accessible to the community"²⁴, and Mr. Niewoit's affidavit indicates that he meets with individuals for behavior correction and personal and spiritual growth and "[t]hese meetings are to further the charitable purposes of Mt. Zion, allowing their continued physical and spiritual growth"²⁵, these specific purposes are not found in Petitioner's Articles of Incorporation. Additional statements found in the affidavit, such as "to assist individuals to establish themselves for life and restore their physical and spiritual health"²⁶ are vague statements mirroring language found in *Wexford*.

The Tribunal finds *Livingston County Hockey Association, Inc. v Township of Genoa* applicable here.²⁷ In that case the petitioner contended that hockey and ice skating are charitable activities "because they "lessen the burdens of government" by improving the health and wellness of the population petitioner serves, and petitioner provides significant charity to that end." In that case the court determined that the petitioner was not organized solely for charity but was organized chiefly for promoting ice-hockey and ice-related activities despite passing references to "charitable purposes" found in the Articles of Incorporation.²⁸ Similarly here, Petitioner's amended Articles of Incorporation provide a passing reference to charity, but its articles and purpose as a whole indicate Petitioner is organized as a religious organization. While Petitioner does provide some spiritual counseling on the property, "[p]roviding charity is not dispositive of an organization's status as a charitable institution."²⁹ The record indicates that the subject property is mainly used for recreational purposes, which is not the purpose for which Petitioner was chiefly incorporated. Use of the property for spiritual counseling or other religious services, while charitable and within Petitioner's described purpose, is incidental to the property's main use. Like the petitioner in *Livingston County Hockey Association*, the Petitioner here has not met its burden to establish that its charity was solely or chiefly designed to improve physical fitness and growth. Thus, the Tribunal finds that Petitioner is not entitled to an exemption under MCL 211.7o.

²⁴ Affidavit of Loren Covarrubias.

²⁵ Affidavit of Dan Niewoit.

²⁶ *Id.*

²⁷ *Livingston Cty Hockey Ass'n v Twp of Genoa*, unpublished per curiam opinion of the Court of Appeals, issued May 6, 2021 (Docket No. 332483).

²⁸ *Id.*

²⁹ *Id.*

JUDGMENT

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

This Final Opinion and Judgment resolves the last pending claim and closes the 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: May 8, 2023
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