



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

Knier Powers Martin & Smith LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 22-001900

City Of Bay City,
Respondent.

Presiding Judge
Patricia L. Halm

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING PETITIONER'S AMENDED MOTION FOR SUMMARY
DISPOSITION

ORDER GRANTING PARTIAL SUMMARY DISPOSITION IN FAVOR OF
RESPONDENT

PARTIAL FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Order Denying Petitioner's Motions for Summary Disposition and Partially Granting Summary Disposition in favor of Respondent (hereinafter "Proposed Order") on February 16, 2023. The Proposed Order states, in pertinent part, "[t]he parties have 20 days from date of entry of this Proposed Order to notify the Tribunal in writing, by mail or by electronic filing, if available, if they do not agree with the Proposed Order and to state in writing why they do not agree with the Proposed Order (i.e., exceptions)."

On March 8, 2023, Petitioner filed exceptions to the Proposed Order. In the exceptions, Petitioner states that the Proposed Order incorrectly states that Petitioner did not indicate the subrule under which it was seeking summary disposition, and further incorrectly states that Petitioner referred to the "applicable inflation rate," rather than the applicable inflation rate *multiplier*. Petitioner states that its affidavit and exhibits included all facts necessary for the Tribunal to rule and were not 'conclusory' or 'vague and perfunctory.'¹ Petitioner further contends that the Administrative Law Judge (ALJ) improperly ignored its arguments regarding the definition of the term "additions." Finally, Petitioner contends that the Order Granting Partial Summary Disposition in favor of Respondent was based on the incorrect legal conclusion that the new roof on the subject property constitutes new construction.

¹ Petitioner states that the Proposed Order failed to point out the additional facts the Tribunal needed to make a ruling, and further that the Tribunal went on to make a ruling without any additional facts.

On March 20, 2023, Respondent filed a response to the exceptions. In the response, Respondent states that Petitioner's exceptions fail to provide any basis to conclude that the Tribunal committed any error and should be rejected.

The Tribunal has considered the exceptions, response, and the case file and finds that the ALJ properly considered the evidence submitted in rendering the Proposed Order. More specifically, the Tribunal finds that Petitioner is largely restating arguments previously made. As it relates to Petitioner's contentions that the ALJ misquoted its Amended Brief in Support of Motion for Summary Disposition, the Tribunal finds that these errors did not affect the ALJ's analysis of the case, and as such were de minimis in nature.² Further, the contention that ALJ did not indicate what additional facts were necessary to make a ruling is without merit. The Proposed Order specifically indicates that the additional information needed to dispose of the present case relates to the value of the "roof replacement." Though Petitioner provided invoices for the cost of work completed, the Tribunal notes that cost and value are not synonymous,³ and as such the ALJ properly determined that additional discovery is required as to the value of the "roof replacement."

In support of its contention that the ALJ did not properly consider its argument regarding the definition of the term "additions," Petitioner states that the legislature does not have the authority to define constitutional terms, citing the decision in *WPW Acquisition Company v City of Troy*. The Tribunal finds, however, that Petitioner's reliance on *WPW Acquisition Co.* is misplaced. In *WPW Acquisition Co.*, the Michigan Supreme Court held that the legislature could not define the term "additions" in ways that were "inconsistent with the established meaning of the term 'additions' at the time it was added to the relevant constitutional provision,"⁴ *not* that the legislature was precluded from defining constitutional terms altogether. As such, the Tribunal finds that the ALJ's reliance on the definition of the term "additions" as outlined in MCL 211.34d(1)(b) was appropriate.⁵ Finally, Petitioner's contention regarding the determination that the "roof replacement" was new construction under MCL 211.34d(1)(b)(iii) was previously raised and properly addressed in the Proposed Order.

² The Tribunal finds that the ALJ properly considered Petitioner's motion under MRC 2.116(C)(10) as was indicated in Petitioner's Amended Brief in Support of Motion for Summary Disposition.

³ *The Appraisal of Real Estate*, Appraisal Institute (Chicago, 15th ed, 2020) at p 48.

⁴ *WPW Acquisition Co v City of Troy*, citing *Michigan Coalition of State Employee Unions v. Civil Service Comm.*, 465 Mich. 212, 634 N.W.2d 692 (2001) "if a constitutional phrase is a technical legal term or a phrase of art in the law, the phrase will be given the meaning that those sophisticated in the law understood at the time of enactment unless it is clear from the constitutional language that some other meaning was intended."

- ⁵ Petitioner further contends that "construing the meaning of constitutional language is a basic *judicial* function." Inasmuch as the Tribunal is a quasi-judicial administrative entity, this argument further supports that the Tribunal has the authority to determine the definition of the term "additions."

The ALJ determined that Respondent is entitled to partial summary disposition. This determination is supported by the record and applicable statutory and case law. As such, the Tribunal adopts the Proposed Order as the Tribunal's partial final decision in this case.⁶ The Tribunal also incorporates by reference the Conclusions of Law contained in the Proposed Order in this Partial Final Opinion and Judgment. The subject appeal shall go forward only as it relates to the outstanding issue of the value of the "roof replacement" utilized to calculate the property's TV.

Therefore,

IT IS ORDERED that Petitioner's Motion for Summary Disposition and Amended Motion for Summary Disposition are DENIED.

IT IS FURTHER ORDERED that Respondent shall be GRANTED Partial Summary Disposition in its favor under MCR 2.116(I)(2).

IT IS FURTHER ORDERED that a telephonic status conference will be scheduled to discuss the scheduling of a hearing to address the TCV of the addition.

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

⁶ See MCL 205.726.

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 Patricia L. Haem

Entered: April 24, 2023

jjk

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



STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

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Knier, Powers, Martin & Smith, LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 22-001900

City of Bay City,
Respondent.

Presiding Judge
Peter M. Kopke

PROPOSED ORDER DENYING PETITIONER'S MOTION
FOR SUMMARY DISPOSITION

PROPOSED ORDER DENYING PETITIONER'S AMENDED MOTION
FOR SUMMARY DISPOSITION

PROPOSED ORDER GRANTING PARTIAL SUMMARY DISPOSITION
IN FAVOR OF RESPONDENT

On October 12, 2022, Petitioner filed an amended motion requesting that the Tribunal enter Summary Disposition in their favor.¹ Although Petitioner has once again failed to indicate the subrule under which they seek Summary Disposition, the Tribunal finds, based upon the contents of both the original and amended motions, that Petitioner is moving for Summary Disposition under MCR 2.116(C)(10). In that regard, Petitioner claims that:

1. "Petitioner owns an office building in Bay City, Michigan, **which is classified as 201 Commercial-Improved.**" [Emphasis added.]
2. "The 2021 taxable value on said real estate was \$161,262."
3. "**In 2021 Petitioner replaced the existing roof on its building with new but similar materials** [and] Petitioner respectfully submits that there is no dispute as to material fact as set forth above." [Emphasis added.]

¹ The Tribunal entered an Order on September 21, 2022, proposing to dismiss Petitioner's true cash value appeal (TCV), holding Petitioner's September 2, 2022 Motion for Summary Disposition in abeyance, and requiring that: (i) Petitioner file a supplemental motion and brief and (ii) Respondent file a response to the supplemental motion and brief.

As for the proposed dismissal of Petitioner's TCV claim, no exceptions have been filed and the time frame for the filing of exceptions has expired. As such, Petitioner's TCV appeal is subject to dismissal.

As part of its Amended Motion for Summary Disposition, Petitioner once again requests oral argument. Although not addressed in the September 21, 2022 Order, oral argument is not and was not necessary for the resolution of either the original or amended Motions, as indicated herein.

4. "For 2022, Respondent City of Bay City increased the 2022 taxable value to \$181,283, an increase of 12.4152%."
5. "In conformance with Const 1963, Article 9, § 3 and pursuant to MCL 211.27a(2)(a), the increase in taxable value is limited to 'the lesser of 1.05 or the inflation rate, plus all additions.'"
6. "The inflation rate is defined at MCL 211.34d(1)(l) and the applicable inflation rate for 2022 as provided therein is 1.033[.]²"
7. "Accordingly, the increase in taxable value is limited to 3.3% or a taxable value of \$166,584, such that Respondent City of Bay City has overstated taxable value by \$14,699."
8. "Petitioner understands Respondent City of Bay City claims its assessment is justified because the roof replacement comes with the term 'additions' used in MCL 211.27a(2)(a)."
9. "The city is in error. MCL 211.27a(11)(a) provides that the term 'additions' means 'that term as defined in Section 34d.' **MCL 211.34d(1)(b) defines the term 'additions,' and none of the situations presented in that subsection apply to Petitioner's simple roof replacement.**" [Emphasis added.]
10. "This Motion is brought pursuant to R 792.10102 (application of court rules), R 792.10115 ('Motion Practice'), and R 792.10129 ('Summary Disposition'). This motion is further supported by the accompanying brief."³

Respondent filed a Response to the Motion on October 25, 2022. In the Response, Respondent claims that:

1. "**Petitioner's property is a commercial office building. Petitioner performed certain work on its building in October 2021, which included removing the previous roof at the property and constructing a new roof with, among other things, new landmark shingles and a new 60 mil EPDM membrane. That building work was performed in October 2021,** and Petitioner represents that the cost of that work was \$70,053.00." [Emphasis added.]
2. "MCL 211.34d(b)(iii) broadly defines 'additions' in part as 'property not in existence on the immediately preceding tax day and not replacement construction.'⁴ The statute narrowly and specifically defines 'replacement

² Petitioner incorrectly indicates the inflation rate as 1.033%. More specifically, the actual inflation rate for the 2022 tax year was 3.3% resulting in a factor of 1.033 and not 1.033%.

³ The rules cited by Petitioner in support of both the original and amended Motions (i.e., "brought pursuant to") are the general MOAHR rules and not the Tribunal rules. Although both sets of rules govern practice and procedure in all cases pending before the Tribunal, TTR 201(1) also provides that: "To the extent there is a conflict between the rules in parts 1 and 2 the rules in part 2 shall govern." In that regard, the Tribunal has specific rules relating to the application of the Michigan Court Rules (see TTR 215) and motion practice (see TTR 225), which govern the instant motions. More specifically, the Tribunal has no rule relating to summary disposition and, as such, the Tribunal utilizes MCR 2.116 to resolve such motions, as also clearly indicated in the September 21, 2022 Order.

⁴ Respondent also claims that: "Petitioner utilizes a dictionary definition of the term 'addition,' but resorting to dictionary definitions would be improper here, because the Legislature has expressly defined 'addition' in the statute itself. MCL 211.34d."

construction' as 'construction that replaced property damaged or destroyed by accident or acts of God.' MCL 211.34d(b)(v). **Here Petitioner represents – and Respondent agrees – that the work performed on the property in October 2021 was not 'replacement construction' as that term is defined by MCL 211.34d(b)(v) and used in MCL 211.34d(b)(iii).**" [Emphasis added.]

3. ". . . because the new roof that was installed on Petitioner's commercial property in 2021 is 'property not in existence on the immediately preceding tax day' as of December 31, 2021[] and is also 'not replacement construction' under the statutory definition of 'replacement construction,' it is properly characterized as 'new construction' and, therefore, an 'addition' within the definition of MCL 211.34d(b)(iii). Petitioner argues in a conclusory manner that the new roof is not new construction, because property had a roof that existed on the immediately preceding tax day. But it is not the same roof. The roof that existed on the immediately preceding tax day was an old roof that was presumably fully depreciated and at the end of its service life. **Petitioner replaced it with a new roof that was not in existence on the immediately preceding tax day and, therefore, constitutes a taxable addition to the property.** This makes sense under the statutory scheme. Replacing the old, obsolete (likely leaking) roof with a brand[-]new roof and shingles will increase the value of the property by adding new materials to existing improvements. And critically, it increases the value by the addition of 'property not in existence' to the existing building." [Emphasis added.]
4. "Here it is undisputed that the roof replacement does not qualify as 'replacement construction' under MCL 211.34d(b)(v). Nevertheless, Petitioner argues that its roof replacement, which does not satisfy the requirements of MCL 211.34d(b)(v), should be given the same favorable tax treatment as replacement construction that does satisfy all four of those requirements. This result is nonsensical under the plain language of the statute. **The Legislature could easily have written MCL 211.34d(b)(v) to include all 'routine' replacement work, but it has not done so.** Because the work in question is not 'replacement construction' and qualifies as new construction under the broad definition of MCL 211.34d(b)(iii), it is an 'addition' for purposes of the assessment in question. This honorable Tribunal should grant Respondent summary disposition on this basis as a matter of law, pursuant to MCR 2.116(l)(2), and dismiss this appeal in its entirety." [Emphasis added.]
5. "Finally, even if Petitioner had a legal basis to argue that the work it performed is excluded from the statutory definition of 'addition' (and it has not provided any support for that position thus far), Petitioner's Motion should be denied because it is premature. The affidavit furnished by Petitioner is conclusory and does not describe the specific work performed. Likewise, the invoice attached thereto reflects approximately \$70,000 of work performed, but only contains vague and perfunctory descriptions of the work performed. Petitioner's Motion should be denied in any event because Respondent has not had an opportunity to conduct discovery regarding the extent and nature of the specific work and improvements made by Petitioner. 'As a general rule, summary disposition is premature if

granted before discovery on a disputed issue is complete.’ *Village of Dimondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23 (2000); quoting *Dep’t of Social Services v Aetna Casualty & Surety Co*, 177 Mich App 440, 446; 443 NW2d 420 (1989).”

The Tribunal has reviewed the original motion, amended motion, Response, attached documentation, and case file and finds that the denial of Petitioner’s motions under MCR 2.116(C)(10) and the granting of partial Summary Disposition in favor of Respondent under MCR 2.116(I)(2) is warranted. In that regard, there is no specific Tribunal rule governing motions for summary disposition. Thus, the Tribunal is, as indicated above, bound to follow the Michigan Rules of Court in rendering a decision on such motions.⁵ In that regard, Summary Disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. Under subsection (C)(10), a motion for summary disposition will be granted “when the affidavits or other documentary evidence, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and the moving party is therefore entitled to judgment as a matter of law.”⁶ Further, the Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party.⁷ The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.⁸ The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.⁹ Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving 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.¹⁰ If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.¹¹

As for the motions, Petitioner attached an affidavit to its amended motion indicating that: (i) “Petitioner hired Valley Roofing Company of Bay City, Michigan to replace the roof at its office building at 900 Washington Avenue, Bay City, Michigan” and (ii) “Exhibit A is the invoice which describes the work completed, and which [Petitioner] received and paid regarding the work.”¹² Although the affidavit and exhibit are, as correctly indicated by Respondent, “conclusory” with “vague and perfunctory descriptions of the work performed” and no discovery has yet been conducted regarding “the extent and nature of the specific work and improvements made by Petitioner,” the

⁵ See TTR 215.

⁶ See *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 5; 890 NW2d 344 (2016) (citation omitted).

⁷ See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).

⁸ See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

⁹ *Id.*

¹⁰ See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

¹¹ See *McCormic v Auto Club Ins Ass’n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

¹² No affidavit or other documentation was attached to the September 2, 2022 Motion for Summary Disposition and the Tribunal’s statement relating to said failure was, unfortunately, partially erroneous, as indicated herein.

Tribunal erred in the issuance of the September 21, 2022 Order, as the information provided was sufficient to determine that Petitioner’s “roof replacement” was an addition for taxable value (TV) purposes. More specifically, the subject property is classified as commercial real property and, as such, MCL 211.27(2) has no applicability to the instant property as that statutory provision “applies only to residential property.” Further, the term “additions” is defined by MCL 211.34d(1)(b) and, as such, Petitioner’s reliance on the American Heritage Dictionary definition of “addition” is misplaced.¹³ Petitioner did, however, also correctly indicate that only two of the subsections under MCL 211.34d(1)(b) “relate in any way to Petitioner’s **new** roof” (i.e., MCL 211.34d(1)(b)(iii) relative to new construction and MCL 211.34d(1)(b)(v) relative to replacement construction). [Emphasis added.] In that regard, Petitioner claims that neither subsection applies because: (i) “[t]here can be no dispute that Petitioner’s building had an existing roof on the immediately preceding tax day” and (ii) “[t]here can be no dispute that Petitioner’s roof replacement was not the result of accident or act of God.” Although Petitioner’s second claim or, more appropriately, admission that the roof was not “damaged or destroyed by accident or act of God” simplifies the analysis necessary to resolve the TV issue presented in this case, Petitioner’s first claim oversimplifies that issue, as “the legislative intent reasonably inferred from the words expressed in the [instant] statute” indicate that the Petitioner’s purported “roof replacement” is new construction that was properly added to the property’s TV for the tax year at issue.¹⁴ More specifically, the Legislature only created two categories of construction for TV purposes – new and replacement construction. The Legislature also limited replacement construction to the replacement of property that was damaged or destroyed by accident or act of God despite knowledge relating to the routine replacement of property that is not damaged or destroyed by accident or act of God, which indicates that the Legislature intended that the instant construction would constitute new construction as that is the only other category of construction provided by the Legislature under the instant statute. To put it in context, the roof on the immediately preceding tax date (i.e., December 31, 2020) was not in existence on the tax date at issue (i.e., December 31, 2021). Rather, there was a new and different or upgraded roof on that tax date, as

¹³ See *Spartan Stores, Inc v City of Grand Rapids*, 307 Mich App 565, 569; 861 NW2d 347 (2014), which provides that:

The primary goal of statutory interpretation “is to discern and give effect to the intent of the Legislature.” *Lafarge Midwest, Inc v Detroit*, 290 Mich App 240, 246; 801 NW2d 629 (2010). “When ascertaining the Legislature’s intent, a reviewing court should focus first on the plain language of the statute in question” *Fisher Sand & Gravel Co v Neal A Sweebe, Inc*, 494 Mich 543, 560; 837 NW2d 244 (2013) (citations omitted). The contested portions of a statute “must be read in relation to the statute as a whole and work in mutual agreement.” *US Fidelity & Guarantee Co v Michigan Catastrophic Claims Ass’n (On Rehearing)*, 484 Mich 1, 13; 795 NW2d 101 (2009).

More importantly, see *Spartan Stores* at 574-575, which provides that “[i]f a term used in a statute is **undefined**, a court may look to a dictionary for interpretative assistance. *Klooster v City of Charlevoix*, 488 Mich 289, 304; 795 NW2d 578 (2011).” **In the instant case**, the term “additions” is, as admitted by Petitioner, defined.

¹⁴ See *People v McIntire*, 461 Mich 147, 152-153; 599 NW2d 102 (1999).

demonstrated by Petitioner's affidavit and invoice exhibit. There is, however, an outstanding issue as to the value of the "roof replacement" utilized to calculate the property's TV, that still needs to be resolved.

Therefore,

IT IS ORDERED that Petitioner's Motion for Summary Disposition and Amended Motion for Summary Disposition are DENIED.

IT IS FURTHER ORDERED that Respondent shall be GRANTED Partial Summary Disposition in its favor under MCR 2.116(1)(2),

IT IS FURTHER ORDERED that a telephonic status conference will be scheduled after the expiration of the time for the filing of exceptions and the resolution of those exceptions, if any, to discuss the scheduling of a hearing to address the TCV of the addition.

EXCEPTIONS

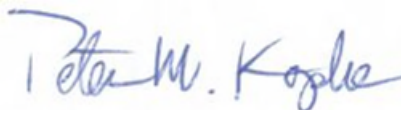
This Proposed Order was prepared by the Michigan Office of Administrative Hearings and Rules. The parties have 20 days from the below "Date Entered by Tribunal" to notify the Tribunal and the opposing party in writing, by mail or by electronic filing, if they do not agree with the Proposed Dismissal Order and to state in writing why they do not agree with the Proposed Dismissal Order (i.e., exceptions). Exceptions are limited to the evidence submitted prior to or at the hearing and any matter addressed in the Proposed Dismissal Order. 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.¹⁵

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: February 16, 2023
pmk

By  _____

¹⁵ See MCL 205.762(2) and TTR 289(1) and (2).

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