



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

MARLON I. BROWN, DPA
DIRECTOR

Kent County,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MTT Docket No. 23-001774

Byron Township,
Respondent.

Presiding Judge
Joshua M. Wease

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION UNDER
MCR 2.116(C)(8)

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION UNDER
MCR 2.116(C)(10)

ORDER DENYING ENERGY DEVELOPMENT BYRON CENTER LLC'S
MOTION TO INTERVENE

ORDER DENYING ENERGY DEVELOPMENT BYRON CENTER LLC'S
MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

FINAL OPINION AND JUDGMENT

INTRODUCTION

On February 5, 2024, Petitioner filed a motion requesting that the Tribunal enter summary judgment in its favor in this case. More specifically, Petitioner contends that they are entitled to relief under MCR 2.116(C)(8) and MCR 2.116(C)(10).

On February 6, 2024, Energy Developments Byron Center LLC (EDL), filed a motion requesting to intervene in the matter stating it was a party in interest. Further, EDL filed its own motion requesting that the Tribunal enter summary judgment in its favor in this case. More specifically, EDL contends that it is entitled to relief under MCR 2.116(C)(10).

On February 26, 2024, Respondent filed a response to Petitioner's Motion for Summary Disposition, EDL's Motion to Intervene, and EDL's Motion for Summary Disposition. Respondent contends that Petitioner's petition is moot and is no longer a party in interest because it corrected the original assessments that had brought Petitioner to the Tribunal in the first place. Further, Respondent argues that EDL already filed a petition involving this very assessment under docket number 23-003085, however that case was dismissed for lack of jurisdiction and therefore must be dismissed in this case too. Respondent argues that Petitioner's case should be

dismissed for lack of standing and that EDL's claim should be dismissed based on res judicata and mootness.

The Tribunal has reviewed the Motions, responses, and the evidence submitted and finds that granting Petitioner's Motions under MCR 2.116(C)(8) and MCR 2.116(C)(10) are warranted at this time.

**PETITIONER'S CONTENTIONS FOR ITS MOTION FOR SUMMARY DISPOSITION
UNDER MCR 2.116(C)(8) AND (C)(10)**

Petitioner requested specific relief in its petition. First, it requested that the true cash value (TCV), state equalized value (SEV), and taxable value (TV) to be reduced to \$0/exempt and a refund of interest paid. Second, if the property is not determined to be exempt, to reduce the TCV, SEV, and TV to a level permitted by the Michigan Constitution and applicable statutes.

In support of its Motion, Petitioner contends that Petitioner is exempt under MCL 211.7m and is not assessable under MCL 211.181.

Petitioner's Exhibits:

Exhibit A – Affidavit of Darwin Baas

Attachments:

1. October 22, 2020 Correspondence to Daniel Rose from Rhonda Oyer
2. Michigan Department of Environment, Great Lakes, and Energy (EGLE) Solid Waste Disposal Area Operating License and Landfill Gas and Collection System Lease with Exhibits
3. EGLE Renewable Operating Permit
4. 2024 Notice of Assessment, Taxable Valuation, and Property Classification (L-4400) issued to Kent County Department of Public Works (DPW)

Exhibit B – BS & A Online Printout

Exhibit C – Warranty Deed

Exhibit D – Declaration of Restrictive Covenant

Exhibit E – 2023 Board of Review Decision for subject property assessed to Kent County DPW.

Exhibit F – June 27, 2023 Correspondence to EDL from Timothy Baker and 2024 Notice of Assessment, Taxable Valuation, and Property Classification (L-4400) issued to EDL

Exhibit G – 2023 Summer Tax Bill issued to EDL

Exhibit H – August 23 to 24, 2023 email correspondence between Deborah Ondersma and Tim Baker

Exhibit I -- August 24 to 28, 2023 email correspondence between Deborah Ondersma and Tim Baker and 2024 property record card for subject property.

Exhibit J -- Kent County Solid Waste Management Plan

EDL's CONTENTIONS FOR ITS MOTION TO INTERVENE

On February 6, 2024, ELD filed a motion requesting that the Tribunal permit it to intervene and be listed as a co-petitioner in this case. In the motion, ELD states that:

(1) the request is timely; (2) as the lessee of a small portion – an industrial building and associated curtilage where it generates electricity from landfill gas – of the 261.85-acre parcel of property at issue here, EDL has a direct and substantial interest in the outcome of the case that will be impaired absent intervention; and (3) the interests of EDL are not adequately represented by the existing parties.¹

EDL's Exhibits:

- Exhibit 1 -- June 27, 2023 Correspondence to EDL from Timothy Baker and 2024 Notice of Assessment, Taxable Valuation, and Property Classification (L-4400) issued to EDL
- Exhibit 2 -- Email correspondence between Laura Hallahan and Christian Meyer
- Exhibit 3 -- Copy of EDL's Motion for Summary Disposition with exhibits

EDL'S CONTENTIONS FOR ITS MOTION FOR SUMMARY DISPOSITION

On February 6, 2024, Energy Development Byron Center LLC filed a Motion for Summary Disposition under MCR 2.116(C)(10). EDL argues in its Motion that there are no issues of material fact, and this Tribunal should hold that (1) the property is exempt from taxation under MCL 211.7m; (2) the "Revised Notice of Assessment" was procedurally improper such that EDL does not owe any taxes for the 2023 tax year; and (3) alternatively, if EDL does owe taxes for the 2023 tax year, it can only be taxed on the small industrial building and associated 3.42 acres it leases, not the entire property, under MCL 211.181(1).²

EDL's Exhibits:

- Exhibit A -- November 20, 2023 Correspondence to 2023 Byron Township Board of Review requesting correction of "qualified error" under MCL 211.53b with attached exhibits.
- Exhibit B -- Landfill Gass and Collection System Lease, redacted, with exhibits.
- Exhibit C -- 2023 Notice of Assessment, Taxable Valuation, and Property Classification (L-4400) issued to Energy Developments Inc.
- Exhibit D -- June 27, 2023 Correspondence to EDL from Timothy Baker and 2024 Notice of Assessment, Taxable Valuation, and Property Classification (L-4400) issued to EDL.
- Exhibit E -- August 24, 2023 email correspondence between Deborah Ondersma and Tim Baker and 2024 property record card for subject property.

¹ Energy Development Byron Center LLC's Motion to Intervene, at 2.

² Energy Development Byron Center LLC's Motion for Summary Disposition, at 2.

PETITIONER’S RESPONSE TO EDL’S MOTION TO INTERVENE

Petitioner states that it has no objection to EDL intervening in this matter. Further, “Energy Developments has a matter pending against the same Respondent involving the same subject property and the same tax year in MTT Docket No. 24-000024. Allowing Energy Developments to intervene in this matter allows the Tribunal a complete picture of the Respondent Byron Township's ("Respondent") assessment of the subject property for tax year 2024 and promotes judicial economy and efficiency.”

RESPONDENT’S RESPONSE TO PETITIONER’S MOTION FOR SUMMARY DISPOSITION

Respondent argues that Petitioner has filed a Motion for Summary Disposition seeking the Tribunal to grant it relief it has already been granted. Respondent argues that Petitioner lacks standing, and this case should be dismissed.

Respondent’s Exhibits:

- Exhibit A -- June 27, 2023 Correspondence to EDL from Timothy Baker and 2024 Notice of Assessment, Taxable Valuation, and Property Classification (L-4400) issued to EDL
- Exhibit B -- Landfill Gass and Collection System Lease with exhibits.
- Exhibit C -- 2023 Board of Review Decision for subject property assessed to Kent County DPW.
- Exhibit D -- Copy of October 16, 2023 Motion to Withdraw Appeal by Petitioner Energy Developments Byron Center, LLC v Byron Township, Docket No. 23-003085

RESPONDENT’S RESPONSE TO EDL MOTION TO INTERVENE

Respondent argues that EDL’s Motion to Intervene should be denied because it has already had an opportunity to address the assessment at issue and that MCR 2.209 bars EDL from intervening, stating, “The plain language of MCR 2.209(3)—allowing intervention only when an “applicant’s ability to protect that interest” will be impaired or impeded without such relief—makes such a fact clear. Such an interpretation of MCR 2.209(3) is further supported by the fact that request to intervene cannot be used to overcome jurisdictional issues.”³ Further, Respondent argues that the Tribunal did not have jurisdiction to hear EDL’s withdrawn appeal, Docket No. 23-003085, and therefore cannot be appealed in this case. Last, Respondent argues that EDL’s request to intervene is untimely. This appeal has been pending since May 30, 2023. A scheduling Order was issued on September 11, 2023, which set January 5, 2024, as the close of discovery and February 5, 2024, as the last day to file dispositive motions. EDL did not file its Motion to Intervene until well after the initiation of the case and expiration of key deadlines for discovery and dispositive motions.

³ Respondent’s response, at 4-5.

RESPONDENT'S RESPONSE TO EDL MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116

Respondent asserts that EDL's Motion to Intervene in this case is EDL's third attempt to secure relief. EDL failed to timely appeal its 2023 assessment. EDL has further claimed a qualified error in Docket no. 24-000086, which Respondent also refutes and involve different claims than in this case. EDL's attempt to collaterally attack an assessment the Tribunal has no jurisdiction over must be denied.

Respondent argues that even if EDL had timely appealed in its other case, Docket No. 23-003085, it would not be entitled to any form of relief. There is no dispute that Petitioner is exempt from taxation on the subject parcel pursuant to MCL 211.7m. There is also no dispute that EDL was leasing the subject property from Petitioner and that EDL is subject to taxation pursuant to MCL 211.181. The dispute arises between the parties as to whether the subject parcel in its entirety is assessable to EDL or just a portion. The language of MCL 211.181 is clear that EDL is subject to taxation on all portions of the subject property it uses, not just that property which EDL was granted or maintained exclusive control.

Last, Respondent argues that the procedural deficiencies alleged by EDL are unsupported by the record or statutory authority. Correcting the billing/mailing change that occurred was well within Respondent's authority. Petitioner has not cited a single statute or case that would support EDL's contention to the contrary. Although Respondent did not file a motion, it argues that the Tribunal should grant summary disposition in Respondent's favor under MCR 2.116(l)(2) because the Tribunal lacks jurisdiction over EDL's claims.

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.⁴ In this case, Petitioner moves for summary disposition under MCR 2.116(C)(8) and (C)(10).

Motions under MCR 2.116(C)(8) are appropriate when "[t]he opposing party has failed to state a claim on which relief can be granted." The Court of Appeals has held that:

A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint. Under this subrule "[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." When reviewing such a motion, a court must base its decision on the pleadings alone. In a contract-based action, however, the contract attached to the pleading is considered part of the

⁴ See TTR 215.

pleading. Summary disposition is appropriate under MCR 2.116(C)(8) “if no factual development could possibly justify recovery.”⁵

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.”⁶ The Michigan Supreme Court, in *Quinto v Cross and Peters Co.*,⁷ 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 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.⁸

⁵ *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2 633 (2003) (citations omitted).

⁶ *Id.*

⁷ *Quinto v Cross and Peters Co*, 451 Mich 358 (1996) (citations omitted).

⁸ *Id.* at 361-363. (Citations omitted.)

“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.”⁹ 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.”¹⁰ “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.”¹¹

CONCLUSIONS OF LAW

The Tribunal has carefully considered Petitioner’s Motion under MCR 2.116 (C)(8) and (C10) and finds that granting the Motions is warranted. Further, Tribunal finds that EDL’s Motion to Intervene is barred *res judicata* and its Motion for Summary Disposition must be denied as moot.

Energy Development Byron Center LLC’s Motion to Intervene

Respondent provides persuasive reasons for denying EDL’s Motion to Intervene based on a lack of jurisdiction and untimeliness. First, EDL had the opportunity to protest its 2023 assessment within 35 days of receiving notice. EDL initiated an appeal regarding its 2023 assessment on August 18, 2023, via docket no. 23-003085. On October 17, 2024, EDL withdrew its 2023 appeal. In withdrawing its appeal, EDL admitted that the Tribunal lacked jurisdiction to hear its claims based on EDL’s untimely filing. Further, MCR 2.209 bars expanding the Tribunal’s jurisdictional limits and allowing EDL to intervene in this case involving the exact same property, assessment, and tax year.¹² Second, even if there were jurisdiction, EDL’s Motion to Intervene was very late in the scheduled procedures for this case. As Respondent calculated, EDL’s Motion was more than 250 days after this appeal was initiated and more than 30 days since discovery closed.

The Tribunal has considered the Motions, responses, and the case file and finds that EDL cannot intervene since its own appeal for assessment of the subject property for the year at issue was withdrawn for jurisdiction and is barred by *res judicata*.¹³ Therefore, EDL is barred from intervening in this case and its Motion for Summary Disposition is not property before the Tribunal.

Petitioner’s Motion Under MCR 2.116(C)(8)

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the pleadings alone.¹⁴ In this case, Petitioner brings a (C)(8) motion against Respondent’s answer.

⁹ *West v General Motors Corp*, 469 Mich 177 (2003).

¹⁰ *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).

¹¹ *Id.*

¹² Respondent’s Response to EDL’s Motion to Intervene, at 5.

¹³ See TTR 223 and MCR 2.209.

¹⁴ *Simko v. Blake*, 448 Mich. 648, 654; 532 NW2d 842 (1995).

“All factual allegations in support of the claim are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts.”¹⁵ “A summary disposition motion pursuant to MCR 2.116(C)(8) will be granted only where, after the pleadings are examined, the claim is so clearly unenforceable that no amount of factual development could justify a right of recovery.”¹⁶

Reconciling the parties’ claims involves distinguishing a party being exempt from taxation and a parcel of property being exempt from taxation. Respondent claims in paragraphs 13, 14, and 16 are specific to the property’s taxable status, not Petitioner’s taxable status as a government entity. Petitioner explicitly alleges that the property is exempt because Petitioner owns the property, however, Respondent is technically arguing, by reasonable inference, that while Petitioner itself may be exempt from taxation, the property is not since in this case EDL can be assessed tax on the occupancy and use of that property under MCL 211.181. Petitioner’s requested relief is that the property’s TCV, SEV, and TV are set to “\$0/Exempt.” However, even when taxpayers are exempt, the TCV and SEV of the properties are not set to \$0. While MCL 211.7m exempts Petitioner from paying taxes on the property, the relief Petitioner is technically requesting is not allowed by law. Therefore, Petitioner’s motion must be denied.

Petitioner’s Motion Under MCR 2.116(C)(10)

Petitioner argues that the Tribunal shall issue an opinion that the property is tax exempt.¹⁷ Respondent counters that “denial of Petitioner’s Motion is required as Petitioner lacks standing to pursue any further relief in regard to the assessment of the subject property that was levied against EDL and for which EDL is solely responsible for.”¹⁸ Respondent cites *Spartan Stores, Inc v City of Grand Rapids* to support its argument that in tax matters, standing requires a party to have an interest in the assessment at issue.¹⁹ Taking Respondent’s analysis one step further, there are cases involving standing when a non-governmental entity leases property from a tax-exempt government entity.²⁰ These cases do not question whether the government entity is tax exempt, but rather whether a for-profit lessee of otherwise tax-exempt property is a party interest to challenge a tax assessment under MCL 205.181. “The plain language of MCL 211.181(1) does not provide a basis to deny the tax-exempt status of property owned by a village; rather, it provides a basis to impose a tax on the lessee or user of that property when the property is used to conduct a business for profit.”²¹ The Tribunal

¹⁵ *Guardian Photo, Inc v Dep’t of Treasury*, 243 Mich App 270, 276; 621 NW2d 233, 237 (2000).

¹⁶ *Gainey Transp Serv, Inc v Dep’t of Treasury*, 209 Mich App 504, 506; 531 NW2d 774, 775 (1995).

¹⁷ Petitioner’s Brief, at 5.

¹⁸ *Id.*

¹⁹ Respondent’s Brief, at 7 citing *Spartan Stores, Inc v City of Grand Rapids*, 307 Mich App 565, 567 (2014).

²⁰ See *American Golf of Detroit v City of Huntington Woods*, 255 Mich App 226, 228; 570 NW2d 469 (1997); *Northport Creek Golf Course LLC v. Twp of Leelanau*, unpublished per curiam opinion of the Court of Appeals, Docket No. 337374 (Nov. 28, 2017), *judgment vacated in part, appeal denied in part*, 503 Mich. 881, 918 N.W.2d 809 (2018).

²¹ *Id.*

finds that the parties agree that Petitioner is exempt under MCL 211.7m and that the Notice of Assessment and tax bills issued to the County were in error. Therefore, there is no genuine issue of material fact, and granting Petitioner's motion under MCR 2.116(C)(10) is warranted. Therefore,

JUDGMENT

IT IS ORDERED that Petitioner's Motion for Summary Disposition under MCR 2.116(C)(8) is DENIED.

IT IS FURTHER ORDERED that Petitioner's Motion for Summary Disposition under MCR 2.116(C)(10) is GRANTED and that Petitioner is not liable for tax, penalty, or interest for the year at issue.

IT IS FURTHER ORDERED that Energy Development Byron Center LLC's Motion to Intervene is DENIED.

IT IS FURTHER ORDERED that Energy Development Byron Center LLC's Motion for Summary Disposition under MCR 2.116(C)(10) is DENIED.

IT IS FURTHER 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 in accordance with this decision within 20 days of entry of this Final Opinion and Judgment, subject to the processes of equalization.²² 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 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,

²² See MCL 205.755.

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%, (xii) after June 30, 2022, through December 31, 2022, at the rate of 4.27%, (xiii) after December 31, 2022, through June 30, 2023, at the rate of 5.65%, (xiv) after June 30, 2023, through December 31, 2023, at the rate of 8.25%, (xv) after December 31, 2023, through June 30, 2024, at the rate of 9.30%, and (xvi) after June 30, 2024, through December 31, 2024, at the rate of 9.50%.

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 or disabled veterans 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.

Alternatively, you may file a claim of appeal with the Michigan Court of Appeals. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal of right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave." A copy of the claim of appeal must be filed with the Tribunal to certify the record on appeal. There is no certification fee.

Entered: September 19, 2024

By  _____

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