



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

MARLON I. BROWN, DPA
DIRECTOR

Michigan Nature Association,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MTT Docket No. 22-001091¹

City of Munising,
Respondent.

Presiding Judge
Patricia L. Halm

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING SUMMARY DISPOSITION IN FAVOR OF RESPONDENT

FINAL OPINION AND JUDGMENT

INTRODUCTION

Michigan Nature Association (Petitioner) filed the appeal in this case on May 23, 2022. In the petition, Petitioner states that it is appealing the subject property's true cash value, assessed value, and taxable value (TV). Petitioner also claimed that it is entitled to a property tax exemption under MCL 211.7o(1), MCL 211.7o(5), and/or MCL 211.7n. On August 8, 2022, Petitioner filed a notice that it would not be filing a valuation disclosure because this case involves "a dispute over the exemption of the property from taxation" ² Further, on February 14, 2023, Petitioner filed a Prehearing Statement in which it states: "Petitioner only contests the property's taxable value, contending that the parcel is exempt from taxation under MCL 211.7o(1), MCL 211.7o(5), and/or MCL 211.7n." Given these statements, the Tribunal finds that the subject property's valuation is no longer at issue.

On May 18, 2023, Petitioner filed a motion requesting that the Tribunal enter summary disposition in its favor under MCR 2.116(C)(9) and (C)(10), alleging it is entitled to an exemption from property taxes under MCL 211.7o(1), MCL 211.7o(5), and/or MCL 211.7n. On June 8, 2023, the City of Munising (Respondent) filed a response to the motion requesting that the Tribunal deny Petitioner's motion and grant summary disposition in its favor under MCR 2.116(I)(2).

Having reviewed the motion, the response, and the evidence submitted, the Tribunal finds that denying Petitioner's Motion for Summary Disposition is warranted. However, granting summary disposition in favor of Respondent under MCR 2.116(I)(2)

¹ On May 10, 2023, the Tribunal issued an order consolidating Docket Nos. 22-001100 and 22-001091. As such, this decision pertains to the consolidated appeal. The property at issue (the subject property) consists of Parcel Nos. 051-451-071-00, 051-451-054-00, and 051-451-056-00.

² Notice of No Valuation Disclosure.

is appropriate as Petitioner has not proven entitlement to an exemption under MCL 211.7o(1), MCL 211.7o(5), or MCL 211.7n.

Given the above, the subject property's TV for the tax years³ at issue, shall be as follows:

Parcel Number: 051-451-071-00

Year	TV
2022	\$4,500
2023	\$4,725

Parcel Number: 051-451-054-00

Year	TV
2022	\$21,300
2023	\$22,365

Parcel Number: 051-451-056-00

Year	TV
2022	\$19,500
2023	\$20,475

PETITIONER'S MOTION FOR SUMMARY DISPOSITION

The subject property is known as the Twin Waterfalls Memorial Plant Preserve, which is a nature preserve owned by Petitioner. The subject property consists of three parcels of property that contain various plants, wildlife, and natural geological features. As indicated in its Articles of Incorporation (Articles), Petitioner's purpose is to "acquire, maintain, and protect natural areas that predominantly contain examples of Michigan fauna, flora, geologic features and other components and aspects of Michigan, including habitat and natural communities for fish, wildlife and plants in the state of Michigan."⁴

In April 2021, in an effort to repair damage to the trails and other natural features resulting from years of public use, Petitioner elected to temporarily close the subject property to the public for maintenance. On March 19, 2022, Respondent notified Petitioner that its exemption status was up for review, as the property was closed and not available for public use. Petitioner responded, indicating it was entitled to a charitable exemption under MCL 211.7o(1). Further, because it is a qualified conservation organization, Petitioner claims that it is also entitled to an exemption under MCL 211.7o(5). Finally, Petitioner argued that it is entitled to an exemption under MCL 211.7n because one of its stated purposes is "to carry on a program of conservation

³ "If the tribunal has jurisdiction over a petition alleging that the property is exempt from taxation, the appeal for each subsequent year for which an assessment has been established shall be added automatically to the petition." MCL 205.737(5)(a). The 2024 tax year is not included in this appeal as a separate appeal was filed for that tax year and assigned Docket No. 24-003370.

⁴ Petitioner's motion, Exhibit 1.A.

study and education.”⁵ Respondent’s Board of Review (BOR) denied each exemption stating that Petitioner no longer qualified for an exemption as the subject property was closed to the public and further that Petitioner provided no evidence to show an educational or charitable benefit to the community.

MCL 211.7o(1) provides that “[r]eal 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 the [General Property Tax Act].” To that end, Petitioner argues that its stated purpose is to “acquire, maintain, and protect natural areas, to engage in activities to protect threatened and endangered species, and to carry on educational and stewardship activities to further these important conservation objectives.”⁶ Petitioner cites *Moorland Twp v Ravenna Conservation Club, Inc*⁷ in support of this exemption request, arguing that its purpose is indistinguishable from that of the petitioner in *Moorland*. Petitioner contends that it has never veered from its sole purpose to maintain the subject property, and closing the subject property temporarily is an attempt to prevent further damage and will ultimately enhance future access to the property. Therefore, the subject property’s temporary closure should not disqualify Petitioner from an exemption under MCL 211.7o(1).

Petitioner also argues that it is a qualifying conservation organization under MCL 211.7o(5) as its purpose is to allow for conservation activities and study. Pursuant to MCL 211.7o(5):

Real property owned by a qualified conservation organization that is held for conservation purposes and that is open to all residents of this state for educational or recreational use, including, but not limited to, low-impact, nondestructive activities such as hiking, bird watching, cross-country skiing, or snowshoeing is exempt from the collection of taxes under this act.

However, because years of public use led to the subject property’s destruction, Petitioner was left with no choice but to implement the temporary closure so that repairs could be made, which in turn promotes the subject property’s longevity.

Petitioner also argues that it is entitled to an exemption under MCL 211.7n, which states in part that:

Real estate or personal property owned and occupied by nonprofit theater, library, educational, or scientific institutions incorporated under the laws of this state with the buildings and other property thereon while occupied by them solely for the purposes for which the institutions were incorporated is exempt from taxation under this act.

⁵ *Id.*

⁶ *Id.* at 7.

⁷ *Moorland Twp v Ravenna Conservation Club, Inc*, 183 Mich App 451, 460; 455 NW2d 331 (1990).

In keeping with its Articles, Petitioner's purpose is not only to "acquire, maintain and protect natural areas" but to also "carry on a program of conservation study and education."⁸

Petitioner asserts that it merely closed the subject property temporarily in an attempt to repair the damage caused by the public. Respondent erroneously revoked the exemption because the subject property was "no longer accessible to the public."⁹ Petitioner never intended to keep the subject property closed permanently, stating to the contrary that "[o]nce that work is complete, the property will be fully re-opened to the public."¹⁰ Petitioner maintains that even though they temporarily closed the subject property to public access, they qualify for a property tax exemption.

Petitioner submitted the following exhibits in support of its motion:

1. Affidavit of Andrew Bacon, Conservation Director and Head of Stewardship.
 - 1.A. Petitioner's Articles.
 - 1.B. Photographs of the subject property.
2. Respondent's Response to Petitioner's Consolidated Discovery Request to Respondent.
3. Notification letter to Petitioner from Assessor.
4. Letter to the BOR from Petitioner.

RESPONDENT'S RESPONSE

Respondent does not dispute that the subject property was previously granted a property tax exemption, nor does it dispute that Petitioner closed the property for maintenance and repairs in April 2021. However, because the subject property was closed during the tax years at issue and Petitioner provided no plans or information about the reasons for the closure or the anticipated reopening date, the BOR denied Petitioner's exemption request.¹¹ Further, Petitioner provided no information to the BOR to establish that the subject property was entitled to any other scientific, educational, or charitable exemption. As stated in the 2022 BOR decision, the "[p]roperty is no longer accessible to the public and signs indicate same posted on site."¹² Respondent notes that the subject property remained closed as of the filing of Petitioner's motion.

To qualify for an exemption under MCL 211.7o(1), charitable institutions must own and occupy the property at issue solely for their charitable purpose. Petitioner has not offered any information about its charitable purposes or scientific studies, or educational programs that were offered at the subject property during the tax years at issue.

⁸ Petitioner's motion, Exhibit 1.A.

⁹ *Id.* at 8.

¹⁰ *Id.*

¹¹ Respondent's response at 2.

¹² Petition, Exhibit A.

Respondent asserts that to be considered a conservation organization under MCL 211.7o(5), Petitioner must be open to the general public. However, Petitioner never provided Respondent any information about the subject property being reopened to the public. Petitioner is currently not meeting the requirement to be open to the general public as they are not providing unlimited access to the subject property without restriction.

With regard to MCL 211.7n, Respondent argues that the statute unambiguously states the exemption applies to “nonprofit organization[s] fostering development of literature, music, painting, or sculpture.” However, Petitioner is a “conservation organization” and not an “arts organization.”¹³ Therefore, Respondent concludes that Petitioner has not met the requirements to qualify as a charitable institution.

Respondent requests that the Tribunal deny Petitioner’s Motion Summary Disposition under MCR 2.116(C)(9) and (10), and grant summary disposition in its favor under MCR 2.116(I)(2).

Respondent did not submit any exhibits in support of its response.

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.¹⁴ In this case, Petitioner moves for summary disposition under MCR 2.116(C)(9) and (C)(10).

MCR 2.116(C)(9)

A motion brought under MCR 2.116(C)(9) seeks a determination of whether the opposing party failed to state a valid defense to the claim asserted against it. The motion is tested by the pleadings alone, with the court accepting all well-pleaded allegations as true.¹⁵ “When a party’s defenses are so untenable as a matter of law that no factual development could possibly deny the plaintiff’s right to recovery, the motion is properly granted.”¹⁶

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.”¹⁷ The Michigan Supreme Court, in *Quinto v Cross and Peters Co.*,¹⁸ provided the following explanation of MCR 2.116(C)(10):

¹³ Respondent’s response at 5.

¹⁴ See TTR 201.

¹⁵ See MCR 2.116(G)(5).

¹⁶ *Hackel v Macomb County Comm*, 298 Mich App 311, 316; 826 NW2d 753 (2012).

¹⁷ *Id.*

¹⁸ *Quinto v Cross and Peters Co.*, 451 Mich 358; 547 NW2d 314 (1996). (citations omitted).

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.¹⁹

“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.”²⁰ 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.”²¹ “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.”²²

¹⁹ *Id.* at 361-363. (Citations omitted.)

²⁰ *West v General Motors Corp*, 469 Mich 177; 665 NW2d 468 (2003).

²¹ *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; 516 NW2d 475 (1994).

²² *Id.*

MCR 2.116(I)(2)

Summary disposition under MCR 2.116(I)(2) is appropriate “[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment as a matter of law.”²³ Thus, under this rule the court may render judgment in favor of the opposing party.

CONCLUSIONS OF LAW

The General Property Tax Act (GPTA)²⁴ provides “[t]hat all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation.”²⁵ 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 exemption.²⁶

Initially, Petitioner requests that the Tribunal grant its motion under MCR 2.116(C)(9). As indicated above, a motion brought under this court rule seeks a determination of whether the opposing party failed to state a valid defense to the claim asserted against it. The motion is tested by the pleadings alone, with the court accepting all well-pleaded allegations as true.²⁷ Here, Petitioner alleges in the petition that it is exempt from taxation and that Respondent improperly revoked the exemption for the subject property for the 2022 tax year.²⁸ Respondent categorically denies these allegations in its answer to the petition, and Respondent even specifies that “[t]he March Board of Review determined that this property is no longer exempt based on the fact that the property is no longer accessible to the public as indicated by signs posted on the property and no evidence was presented of the charitable or educational benefit to the community.”²⁹ Thus, Respondent’s categorical denials and defense renders summary disposition under MCR 2.116(C)(9) improper.³⁰ Further, the Michigan Supreme Court has held that “merely denying liability is itself a valid defense.”³¹ Having given careful consideration to Petitioner’s Motion for Summary Disposition under the criteria for MCR 2.116(C)(9), the Tribunal finds that the motion is denied.

As for Petitioner’s Motion for Summary Disposition under MCR 2.116(C)(10), Petitioner claims there are no genuine issues of material fact that remain regarding whether Petitioner is entitled to an exemption from taxation. Petitioner cites the

²³ See also *Washburn v Michailoff*, 240 Mich App 669; 613 NW2d 405 (2000).

²⁴ MCL 211.1 *et seq.*

²⁵ MCL 211.1(1).

²⁶ *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490, 494-495; 644 NW2d 47 (2002).

²⁷ See MCR 2.116(G)(5).

²⁸ Under MCL 205.737, the 2023, 2024, and 2025 tax years are automatically attached to the petition in this appeal. However, Petitioner filed a separate petition in 2024 under MTT docket number 24-003370. As such, the 2024 and 2025 tax years are not at issue in this case.

²⁹ Respondent’s answer at 2.

³⁰ See *Vill of Dimondale v Grable*, 240 Mich App 553; 618 NW2d 23 (2000). See also *Nasser v Auto Club Ins Ass’n*, 435 Mich 33, 47; 457 NW2d 637 (1990), and *Pontiac School Dist v Bloomfield Twp*, 417 Mich 579, 585; 339 NW2d 465 (1983).

³¹ *Nasser* at 48.

following three sections of the GPTA claiming it qualifies for an exemption under each: MCL 211.7o(1), MCL 211.7o(5), and/or MCL 211.7n. After considering the motion, the response, and all exhibits, the Tribunal finds that there are no genuine issues of material fact that warrant a hearing on the matter.

MCL 211.7o(1)

MCL 211.7o provides:

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.³²

Thus, to satisfy the requirements of MCL 211.7o(1), Petitioner must satisfy the following three elements:

- (1) The real estate 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 thereon are occupied by the claimant solely for the purposes for which it was incorporated.³³

(1) The real estate must be owned and occupied by the exemption claimant

It is undisputed that Petitioner owns the three parcels of property under appeal. However, there is a question as to the subject property's occupancy. As Petitioner explained, "[o]ver the years [it] has built and maintained walking trails, trail signage, and other features to facilitate public access to the Twin Waterfalls Preserve."³⁴ "[Y]ears of extensive use and misuse" damaged the property, resulting in Petitioner closing the property to the public in April 2021 "to, among other things, reroute the trail system, address erosion sites, install new trailhead infrastructure and alternate access sites, and upgrade trails and signage."³⁵ Petitioner explained that its actions were not taken to remove or limit public access to the subject property, but to eventually enhance the public's access. Petitioner argued that while the subject property is closed, it "continued to occupy the Property in the same manner and for the same charitable purposes that [it] had always owned and occupied the Property."³⁶ However, the mere fact that the property was closed means that this statement cannot be true. Given this, the question to be resolved is what constitutes occupancy when real estate owned by an organization, such as Petitioner, whose purposes include "[maintaining] and [protecting] natural areas that predominantly contain examples of Michigan fauna, flora, geologic

³² MCL 211.7o(1)

³³ *Wexford Med Group v City of Cadillac*, 474 Mich 192, 203; 713 NW2d 734 (2006).

³⁴ Petitioner's motion at 2.

³⁵ *Id.* at 3.

³⁶ *Id.*

features, and other components and aspects of the natural environment of Michigan, including habitat and natural communities for fish, wildlife, and plants, in the State of Michigan,”³⁷ is closed to the public.

In *Kalamazoo Nature Center v Cooper Township*,³⁸ the petitioner requested an exemption under MCL 211.7 for vacant land, described as “31 acres of low ground, called pristine or fragile land and through which runs a stream called ‘Trout Run.’”³⁹ In that case, the Tax Tribunal considered whether the petitioner occupied the property, and

[R]uled that the word “occupy” requires “actual physical use of such property by the claimant which is frequent.” The Tribunal observed that, since visitors were not allowed on the property, it was not being physically used by petitioner except for the expulsion of trespassers and that such use was not frequent.⁴⁰

After reviewing the property’s use, the Court disagreed, stating that:

Though the 31 acres is not physically entered upon, it nevertheless is “used” as a demonstration project. Thus, the situation in the instant case is quite different from the usual situation occurring when tracts of land are fenced off and the property is not used for any purpose whatsoever. Here the property, though not physically intruded upon, is used to develop “a better understanding and appreciation of our natural surroundings and of the problems of wise management of our nature resources.” This is precisely one of the four purposes for which KNC was incorporated.

While we agree with the Tax Tribunal that the granting of a tax exemption requires that the lands be used for the purposes for which the exemption is sought and further agree that in most instances physical use of the property is demanded, we cannot agree that in the case before us physical use is a condition precedent to exemption. In terms of contemporary environmentalism, the best “occupancy” may be visual, educational, or other demonstrative type occupancy. Nothing in the statute requires physical use.⁴¹

Thus, under *Kalamazoo Nature Center*, even if physical use is not required, Petitioner was required to show at a minimum that it occupied the subject property in a “visual, educational, or other demonstrative” way. Even though closed to the public, it is

³⁷ Petitioner’s motion, Exhibit 1.A.

³⁸ *Kalamazoo Nature Center, Inc v Cooper Twp*, 104 Mich App 657; 305 NW2d 283 (1981).

³⁹ *Id.* at 661.

⁴⁰ *Id.* at 665.

⁴¹ *Id.* at 665-666.

possible that Petitioner could have carried on a program of conservation study and education, much like the petitioner in *Kalamazoo Nature Center*. Petitioner simply did not do so. Instead, the property was not used for any purpose whatsoever.

Thereafter, in *Liberty Hill Housing Corp v City of Livonia*,⁴² the Michigan Supreme Court concurred with the dictionary definition of “occupy” utilized below by the Court of Appeals, namely that for property owned by a charitable institution, “the charitable institution must at a minimum have a *regular physical presence* on the property.”⁴³ In this case, Petitioner provided no evidence that it had a physical presence on the subject property, let alone a *regular physical presence*. While Petitioner argued that it only closed the property for maintenance purposes, Petitioner submitted no evidence that any maintenance actually occurred. And even though Petitioner explained that its actions were not taken to remove or limit public access, this was precisely the outcome. Therefore, Petitioner’s claim that it “continued to occupy the Property in the same manner and for the same charitable purposes that [it] had always owned and occupied the Property,”⁴⁴ is unsupported. Finally, as explained by the Court, “holding that a nonprofit corporation occupies a property merely by virtue of the fact that the property is being used in a manner consistent with the corporation’s purpose is at odds with the statute’s plain language.”⁴⁵ For these reasons, the Tribunal finds that Petitioner did not occupy the subject property during the tax years at issue.

(2) *The exemption claimant must be a nonprofit charitable institution*

The meaning of “charitable institution” is not legislatively defined and has been developed in case law. Therefore, to determine whether Petitioner is a “nonprofit charitable institution,” it is necessary to analyze the following six factors established by the *Wexford* Court to determine whether Petitioner qualifies as a charitable institution:

- (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

⁴² *Liberty Hill Housing Corp V City of Livonia*, 480 Mich 44; 746 NW2d 282 (2008).

⁴³ *Id.* at 58. (Emphasis added.)

⁴⁴ Petitioner’s motion at 3.

⁴⁵ *Liberty Hill* at 58-59.

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.⁴⁶

Here, Petitioner meets the first *Wexford* factor as it is incorporated as a nonprofit corporation.⁴⁷ As for the second *Wexford* factor, the Court defined “charity” as:

[A] gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.⁴⁸

Therefore, to be considered a charitable institution, Petitioner must provide a gift that benefits an indefinite number of people. While it is undisputed that Petitioner provided such a gift in the past, the subject property’s closure has called into question whether a gift was provided during the tax years at issue. To that end, it is undisputed that the general public was unable to access the subject property, and Petitioner offered no documentation that the public was able to take part in any programs, conservational, educational, or otherwise, during the tax years at issue. As a result, Petitioner’s argument appears to be the same as that made by the petitioner in *Michigan Wildlife and Forest Preservation v Dover Twp.*⁴⁹

In *Michigan Wildlife*, the petitioner sought a charitable exemption under MCL 211.7o for 350 acres of undeveloped land. As in this case, the petitioner was a conservation organization where land was being preserved in its natural state. While certain trees and crops were planted to promote forestry management, there were no educational programs being offered. In fact, the property was enclosed by fencing, had a gated access, and displayed no trespassing signs, thus restricting the general public’s access to the property. The Tribunal denied the petitioner’s exemption request, holding

⁴⁶ *Wexford* at 215.

⁴⁷ Petitioner’s motion, Exhibit 1.A.

⁴⁸ *Wexford* at 211.

⁴⁹ *Michigan Wildlife and Forest Preservation Foundation v Dover Twp*, unpublished per curiam opinion of the Court of Appeals, issued June 25, 1999 (Docket 209573). The Tribunal recognizes that while “unpublished opinions of [the Court of Appeals] are not binding precedent . . . they may, however, be considered instructive or persuasive authority.” *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 145 n 3; 783 NW2d 133 (2010). In this case, the Tribunal finds the COA’s decision instructive.

that “the mere preservation of land, without more, does not make petitioner a charitable organization pursuant to [MCL 211.7o]; . . .” and that “the land had not been occupied solely for the purposes for which petitioner was purportedly incorporated as required by [MCL 211.7o].”⁵⁰

On appeal, the Court reviewed its decisions in *Kalamazoo Nature Center and Moorland Twp v Ravenna Conservation Club, Inc.*,⁵¹ and held that “the preservation and conservation of land in its natural state can be, and has been, considered a charitable purpose,” and that these actions can be construed as lessening the government’s burden.⁵² However, the Court held that this does “not support a conclusion that merely ‘preserving’ land, without more, is a charitable ‘gift’ for the purposes of establishing tax exempt status.”⁵³ The Court recognized that in both *Kalamazoo Nature Center and Moorland Twp*, “the preservation of land in its natural state was combined with a variety of other activities.”⁵⁴ After reviewing the petitioner’s activities, the Court found “that petitioner did little more than plant trees in conformance with a forest management plan and grow certain crops to feed native wildlife. Petitioner does not conduct any educational programs or tours of the property.”⁵⁵ And while abiding by the Department of Natural Resources’ (DNR) maintenance plan, the petitioner did nothing to actively assist the DNR. Given this, the Court held that the facts differed from those in *Kalamazoo Nature Center and Moorland Twp*, and therefore supported the Tax Tribunal’s finding “that petitioner was not a charitable organization for exemption purposes because it had not bestowed a ‘gift’ by merely preserving the land in its present state.”⁵⁶ The Court concluded that “the Tribunal’s decision that petitioner’s preservation of the land was not for the benefit of the general public without restriction or for an indefinite number of persons is supported by competent, material, and substantial evidence on the whole record.”⁵⁷

As in *Michigan Wildlife*, Petitioner restricted the public’s access to the subject property through the use of signage during the tax years under appeal. Petitioner offered no definitive date as to when the subject property would reopen, and although the closure was said to be only temporary, the property remained closed during the tax years under appeal. While the purposes for which the property was closed are understandable, the result is that Petitioner did not offer its charity to anyone during this period. Given this, the Tribunal finds that Petitioner did not bestow a “gift” on anyone and, as such, Petitioner failed to meet the second *Wexford* factor.

Because it was closed to the public, Petitioner also failed the third and fourth *Wexford* factors. Given this, analysis of the remaining *Wexford* factors is unnecessary. Petitioner is not a “charitable institution.”

⁵⁰ *Michigan Wildlife* at *1.

⁵¹ *Moorland Twp v Ravenna Conservation Club, Inc.*, 183 Mich App 451; 455 NW2d 331 (1990).

⁵² *Michigan Wildlife* at *3.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

(3) The exemption exists only when the buildings and other property thereon are occupied by the claimant solely for the purposes for which it was incorporated

Petitioner's Articles provide that the purposes for which Petitioner was organized are:

- a) To acquire, maintain, and protect natural areas that predominantly contain examples of Michigan fauna, flora, geologic features, and other components and aspects of the natural environment of Michigan, including habitat and natural communities for fish, wildlife and plants, in the State of Michigan;
- b) To carry on a program of conservation study and education; and
- c) To carry on such other activities as are permitted under the Michigan Nonprofit Corporation Act.⁵⁸

It is uncontested that one reason Petitioner acquired the subject property was to maintain and protect the Preserves. While Petitioner maintains that it closed the property to protect it, Petitioner failed to provide any documentation regarding the property's maintenance. Specifically, Petitioner provided no evidence as to the specific maintenance required, when the maintenance occurred, when it would be completed, and when the property would reopen. Thus, it appears that Petitioner closed the property for its protection, hoping that it would "heal" itself through lack of use. Moreover, by closing the subject property during the tax years at issue, Petitioner inadvertently eliminated conservation study and education and prohibited any other activities that were once permissible. For these reasons, and for the reasons outlined above, the Tribunal finds that Petitioner did not occupy the subject property solely for the purposes for which it was incorporated during the tax years at issue.

To summarize, Petitioner provided no evidence to support a finding that it had a regular physical presence on the subject property, or that it carried out any educational or conservation study programs that would be considered a charitable gift beneficial to the general public during the tax years at issue. By posting signage indicating the subject property was closed, even if for repairs, Petitioner did just the opposite. Consequently, Petitioner did not meet its burden of proof in qualifying for a charitable institution exemption under MCL 211.7o(1).

MCL 211.7o(5)

The GPTA provides an exemption for qualified conservation organizations. Under MCL 211.7o(5):

Real property owned by a qualified conservation organization that is held for conservation purposes and that is *open to all residents of this state* for educational or recreational use, including, but not limited to, low-impact, nondestructive activities such as hiking, bird watching, cross-country skiing,

⁵⁸ Petitioner's motion, Exhibit 1.A.

or snowshoeing is exempt from the collection of taxes under this act. As used in this subsection, "qualified conservation organization" means a *nonprofit charitable institution* or a charitable trust that meets all of the following conditions:

(a) Is organized or established, as reflected in its articles of incorporation or trust documents, for the purpose of acquiring, maintaining, and protecting nature sanctuaries, nature preserves, and natural areas in this state, that predominantly contain natural habitat for fish, wildlife, and plants.

(b) Is required under its articles of incorporation, bylaws, or trust documents to hold in perpetuity property acquired for the purposes described in subdivision (a) unless both of the following conditions are satisfied:

(i) That property is no longer suitable for the purposes described in subdivision (a).

(ii) The sale of the property is approved by a majority vote of the members or trustees.

(c) Its articles of incorporation, bylaws, or trust documents prohibit any officer, shareholder, board member, employee, or trustee or the family member of an officer, shareholder, board member, employee, or trustee from benefiting from the sale of property acquired for the purposes described in subdivision (a). (emphasis added.)

Thus, to qualify for an exemption under MCL 211.7o(5), it must be determined whether Petitioner is a "qualified conservation organization." To do this, a review of Petitioner's Articles is required.

Petitioner's Articles state that its purpose is to "acquire, maintain, and protect natural areas that predominantly contain examples of Michigan fauna, flora, geologic features, and other components and aspects of the natural environment of Michigan, including habitat and natural communities for fish, wildlife and plants, in the State of Michigan."⁵⁹ This purpose meets the requirements of MCL 211.7o(5)(a).

Article XI of Petitioner's Articles state that "[l]and or rights in land acquired by [the Michigan Nature Association] and designated by the Board of Trustees as a nature sanctuary shall be held by [the Michigan Nature Association] in perpetuity except as otherwise provided in this Article."⁶⁰ The Articles further state that Petitioner's "nature sanctuary" could only be sold or otherwise disposed of by a three-fourths vote of the Trustees. Additionally, Petitioner could sell or transfer a "nature sanctuary" "to a similar conservation organization or government unit subject to a conservation easement, a reverter clause, or other agreement which protects the conservation values of the

⁵⁹ *Id.*

⁶⁰ *Id.*

property, subject to any binding donor agreement to the contrary,⁶¹ with a two-thirds vote of the Trustees. Therefore, Petitioner meets the requirements of MCL 211.7o(5)(b).

Finally, Article XI, Section 5 of the Articles provides that:

No [Michigan Nature Association] property or income, monetary or otherwise, shall inure to or privately benefit any [Michigan Nature Association] Member, Life Member, Trustee, Officer, or employee or the family member of any [Michigan Nature Association] Member, Life Member, Trustee, Officer, or employee nor shall any such person benefit from the sale of land or rights in land owned by [Michigan Nature Association].⁶²

As such, Petitioner meets the requirements of MCL 211.7o(5)(c). Therefore, Petitioner meets the definition of a qualified conservation organization. However, this is not the end of the analysis.

Because “conservation” is not defined within MCL 211.7o or the GPTA, it is appropriate to use the dictionary definition to ascertain the term’s plain and ordinary meaning.⁶³ The *Merriam-Webster Dictionary* defines “conservation” as “a careful preservation and protection of something” and states further that it is “planned management of a natural resource to prevent exploitation, destruction, or neglect.”⁶⁴ Applying this definition to the facts of this case, the Tribunal finds that this portion of the statute is satisfied, and the subject property is held for conservation purposes.

However, the statute requires that the subject property be “open to all residents of this state for educational or recreational use, including, but not limited to, low-impact, nondestructive activities such as hiking, bird watching, cross-country skiing, or snowshoeing”⁶⁵ As discussed, Petitioner admits that during the tax years at issue the subject property was closed to the public. Even though the closure is alleged to be temporary for the betterment of the property (i.e., the maintenance and repair of the land), the statute does not provide an exception for temporary closure of a property. Given this, Petitioner is not entitled to an exemption under MCL 211.7o(5) for the tax years at issue.

MCL 211.7n

Finally, Petitioner argues that “one of its stated purposes of incorporation is ‘to carry on a program of conservation study and education,’ ”⁶⁶ and as such it is entitled to an exemption under MCL 211.7n. MCL 211.7n provides, in pertinent part, that:

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Spectrum Health Hospitals v Farm Bureau Mutual Ins Co of Michigan*, 492 Mich 503, 515; 821 NW2d 117 (2012).

⁶⁴ *Merriam-Webster’s Dictionary* online, <https://www.merriam-webster.com/dictionary/conservation>.

⁶⁵ MCL 211.7o(5).

⁶⁶ Petitioner’s motion at 8.

Real estate or personal property owned *and occupied* by nonprofit theater, library, educational, or scientific institutions incorporated under the laws of this state with the buildings and other property thereon *while occupied by them solely for the purposes for which the institutions were incorporated* is exempt from taxation under this act. (Emphasis added.)

To qualify for an exemption as an educational institution under MCL 211.7n, Petitioner must meet three criteria:

1. The real estate must be owned and *occupied* by the exemption claimant;
2. The exemption claimant must be a nonprofit educational institution, and
3. The exemption exists only when the buildings and other property thereon are *occupied* by the claimant solely for the purposes for which it was incorporated.⁶⁷ (Emphasis added.)

Here, there is no dispute that Petitioner owns the subject property. However, as discussed, Petitioner did not occupy the subject property during the tax years at issue. Therefore, Petitioner does not meet the first or third criteria.

As for the second criteria, the Court in *Ladies Literary Club v City of Grand Rapids*⁶⁸ set forth two requirements that must be met for an organization to qualify for an educational exemption:

1. An institution seeking an educational exemption must fit into the general scheme of education provided by the state and supported by public taxation.
2. The institution must contribute substantially to the relief of the educational burden of government.

According to Petitioner's Articles, one of Petitioner's stated purposes is "to carry on a program of conservation study and education."⁶⁹ This purpose was addressed in Andrew Bacon's affidavit wherein Mr. Bacon states that one of Petitioner's purposes was "to carry on a program of conservation study and education," and that the organization "has undertaken other activities to maintain and enhance public access to the Twin Waterfalls Preserve, for the use, enjoyment, and education of *the general public* in the State of Michigan."⁷⁰ However, in "late April of 2021, [Petitioner] announced that it would be temporarily closing . . . to the general public . . ." In its motion, Petitioner also states that it "coordinates stewardship and other educational

⁶⁷ *Grosse Pointe Academy v Township of Grosse Pointe*, unpublished opinion per curiam of the Court of Appeals, decided November 2, 2004 (Docket No. 248340), citing *Engineering Society of Detroit v Detroit*, 308 Mich 539, 550; 14 NW2d 79 (1944). The Tribunal notes that the requirement that the claimant be incorporated under Michigan law is no longer valid, having been found to be unconstitutional as it denied equal protection to institutions registered out-of-state. *OCLC Online Computer Library Center, Inc v City of Battle Creek*, 224 Mich App 608, 612; 569 NW2d 676 (1997), citing *Chauncey & Marion Deering McCormick Foundation v Wawatam Twp*, 186 Mich App 511, 515; 465 NW2d 14 (1990).

⁶⁸ *Ladies Literary Club v Grand Rapids*, 409 Mich 748; 298 NW2d 422 (1980).

⁶⁹ Petitioner's motion, Exhibit 1.A.

⁷⁰ *Id.*, Exhibit 1. (Emphasis added.)

events, and its sites facilitate field trips so that students can learn about the importance of conservation.”⁷¹ While it is understood that closing the subject property to the general public was essential to maintain and restore the property, Petitioner provided no evidence that education was provided to the general public during the tax years at issue because the property was closed.

Furthermore, Michigan’s Constitution⁷² recognizes that conservation and the development of natural resources are of paramount concerns to the people⁷³; however, “conservation education per se is not mandated.”⁷⁴ In *Michigan United Conservation Clubs v Lansing Township*, the Court failed to see how education regarding the conservation of natural resources “fit into the general scheme of education provided by the state.”⁷⁵ Thus, even if Petitioner had provided conservation education during the tax years at issue, this type of education does not fit into the general scheme of education provided by the state and does not lessen the government’s educational burden. Therefore, the Tribunal finds that Petitioner does not qualify for an exemption under MCL 211.7n.

Conclusion

The Tribunal has considered Petitioner’s Motion under MCR 2.116(C)(9) and (C)(10) and finds that denying the motion is warranted under each provision. As explained, Respondent categorically denied the allegations made in Petitioner’s petition and provided a defense to explain the denial of Petitioner’s exemptions; therefore, summary disposition is not proper under MCR 2.116(C)(9). While the Tribunal finds there are no genuine issues of material fact, granting summary disposition in favor of Petitioner under MCR 2.116(C)(10) is not appropriate as Petitioner has not proven entitlement to the claimed exemptions. As such, the Tribunal finds that granting summary disposition in favor of Respondent under MCR 2.116(I)(2) is warranted.

JUDGMENT

IT IS ORDERED that Petitioner’s Motion for Summary Disposition under MCR 2.116(C)(9) and (C)(10) is DENIED.

IT IS FURTHER ORDERED that Summary Disposition is GRANTED in favor of Respondent under MCR 2.116(I)(2).

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property’s true cash and taxable values as finally provided in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and

⁷¹ *Id.* at 9.

⁷² See Const. 1963, art 4, §52.

⁷³ *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661; 378 NW2d 737 (1985).

⁷⁴ *Id.* at 669.

⁷⁵ *Id.*, citing *Ladies Literary Club* at 755.

Judgment, subject to the processes of equalization.⁷⁶ 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, 2020, through June 30, 2022, at the rate of 4.25%, (ii) after June 30, 2022, through December 31, 2022, at the rate of 4.27%, (iii) after December 31, 2022, through June 30, 2023, at the rate of 5.65%, (iv) after June 30, 2023, through December 31, 2023, at the rate of 8.25%, (v) after December 31, 2023, through June 30, 2024, at the rate of 9.30%, (vi) after June 30, 2024, through December 31, 2024, at the rate of 9.50%, (vii) after December 31, 2024, through June 30, 2025, at the rate of 9.47%, and (viii) after June 30, 2025, through December 31, 2025, at the rate of 8.66%.

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 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.

⁷⁶ See MCL 205.755.

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.

By Patricia L. Haem

Entered: June 25, 2025

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 provided by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk