STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

South Haven Community Hospital Authority,
Petitioner,

v

MTT Docket No. 441225

City of South Haven,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

On July 9, 2014, Respondent filed a motion requesting that the Tribunal enter summary judgment in its favor in the above-captioned case. More specifically, Respondent contends that the subject property, which is vacant land, is not being used for a public purpose under the requirement in MCL 211.7m, and therefore, Petitioner is not entitled to the exemption.

On July 31, 2014, Petitioner filed a response to the Motion, stating that the subject property should be granted an exemption under MCL 211.7m as the subject property is used for a public purpose under the Hospital Authority Act in exercising Petitioner's planning and enlarging authority under MCL 331.1.

The Tribunal has reviewed the Motion, response and the evidence submitted and finds that summary disposition should be granted in favor of Respondent pursuant to MCR 2.116(C)(10).

RESPONDENT'S CONTENTIONS

In support of its Motion, Respondent contends that the subject property does not qualify for the exemption under MCL 211.7m because it is vacant land and is not being used for public purposes. Respondent argues that holding vacant land for possible future expansion is not a use of the land for public purposes. Respondent states that there were no development plans or timeframes indicated in the Petition filed in this case and Respondent is not aware of any specific plans for development of the subject property. Respondent further states that based on the

Petition, it is Respondent's understanding that "no one is currently using the Property for any purpose." Respondent cites *City of Mt Pleasant v State Tax Comm'n*, 477 Mich 50; 729 NW2d 833 (2007), to support the argument that there must be a present use of the property that qualifies as a public purpose. Respondent further cites *Rochester Hills Public Library v City of Rochester Hills*, unpublished opinion per curiam of the Court of Appeals, issued October 3, 1997 (Docket No. 196077), in support of the argument that holding property for future development does not entitle Petitioner to the exemption.

Respondent also argues that denying Petitioner an exemption under MCL 211.7m is consistent with prior Tribunal decisions involving exemptions under MCL 211.7o and MCL 211.7s. Respondent argues that in both *Saints Peter & Paul Lutheran Church v City of Houghton*, MTT Docket No. 282105 (June 13, 2003) and *Flint West Village Comm Dev Co v Flint*, MTT Docket No. 271538 (February 5, 2004) the Tribunal "rejected the idea that holding vacant land for future development was sufficient to qualify for the requested exemption."

PETITIONER'S CONTENTIONS

In support of its response, Petitioner contends that it should be granted an exemption under MCL 211.7m for the subject vacant land "due to Petitioner's unique statutorily granted powers and authority." [Petitioner's Brief at 4.] In support of its argument, Petitioner cites *Michigan Employees Retirement Systems of Michigan v Delta Twp*, 478 Mich 876; 731 NW2d 763 (2007), which held that vacant land held by the petitioner was exempt under MCL 211.7m, based on mandatory investment responsibilities under the Municipal Employees Retirement Act. Petitioner admits that the Hospital Authority Act does not have the same "stark terms" as the Municipal Employees Retirement Act, but asserts that by analogy, the Hospital Authority Act, MCL 331.1, grants Petitioner the "explicit authority for 'planning', 'enlarging', and 'acquiring' related buildings or structures and such power is to be seen as 'an enlargement of a power granted to a city, village or township.'" [Petitioner's Brief at 5.] Petitioner further argues that under MCL 331.1 hospitals, community hospitals, and related facilities "include the land 'necessary or convenient for use for the building or structure.'" [Petitioner's Brief at 5.] It is Petitioner's argument that:

> The public purpose under the Hospital Authority Act is a present use of the land in the exercise of the Petitioner's "planning" and "enlarging" authority, coupled

> with exercising its necessary acquisition of the land necessary to use for its public and community health mandated activities. While the land may be vacant and unoccupied, its purchase for future planning purposes and use to develop public health under the auspices of the Petitioner's statutorily granted powers is a present use as opposed to a prospective use. [Petitioner's Brief at 5 – 6.]

STIPULATED FACTS

Although the Tribunal is precluded from making any findings of fact in deciding a motion for summary disposition under MCR 2.116(C)(10), see *Amerisure Ins Co v Plumb*, 282 Mich App 417, 431; 766 NW2d 878 (2009), the Tribunal is required to render judgment on the basis of the stipulated facts if the same are sufficient to do so. See MCR 2.116(A). With that, the following are facts that were stipulated to by the parties in their Stipulated Facts filed on July 9, 2014:

1. South Haven Community Hospital Authority is duly organized and operating pursuant to statutory authority granted under the Michigan Hospital Authority Act, MCL 331.1, *et. seq*. (the "Act").
2. South Haven Community Hospital Authority is comprised of the following combination of two (2) cities and seven (7) townships joining under the Act: cities of South Haven and Bangor; townships of Arlington, Bangor, Casco, Columbia, Covert, Geneva and South Haven.
3. South Haven Community Hospital Authority is operated as a non-profit healthcare system, fully accredited by the Joint Commission, providing health care and medical services to the general public and residents of the city and township authority members.
4. The City of South Haven is a municipal corporation duly organized and existing under the laws of the State of Michigan.
5. South Haven Community Hospital Authority is the fee simple owner of certain real property located at 899 Bailey Avenue, South Haven, Michigan, Parcel No. 80-53-620-005-00 ("Property").
6. For the 2012 tax year, the City of South Haven determined that the taxable value of the Property was $16,327 and submitted the tax bill [to] South Haven Community Hospital Authority, which is the taxpayer of record. Notwithstanding South Haven Community Hospital Authority's objection and the pendency of this tax appeal, South Haven Community Hospital Authority paid the 2012 tax bill in full.
7. For subsequent tax year 2013, the City of South Haven submitted its assessment of the Property in the amount of $16,718 to South Haven Community Hospital Authority. Notwithstanding South Haven Community Hospital Authority's

objection and the pendency of this tax appeal, South Haven Community Hospital Authority paid the subsequent year tax bill in full.

8. South Haven Community Hospital Authority contends the taxable value should be $0 because it alleges the property is tax exempt under MCL 211.7m.

9. The Property is owned by South Haven Community Hospital Authority and held for possible future hospital and healthcare system expansion and growth.

10. The attached Arial Photograph and Base Map are accurate and complete.

APPLICABLE LAW

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. See TTR 215. In this case, Respondent moves for summary disposition under MCR 2.116(C)(10). 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 if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under (C)(10) will be denied. See *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

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. See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)). The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider. See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* 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. See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material

factual dispute, the motion is properly granted. See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

CONCLUSIONS OF LAW

The General Property Tax Act ("GPTA"), Act 206 of 1983, provides that "all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation." MCL 211.1. "Exemption statutes are subject to a rule of strict construction in favor of the taxing authority." *Huron Residential Services for Youth, Inc v Pittsfield Charter Twp*, 152 Mich App 54, 58; 393 NW2d 568 (1986). Further, a petitioner seeking a tax exemption, under an already-exempt class, bears the burden of proving that it is entitled to the exemption by a preponderance of the evidence. *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490, 494-495; 644 NW2d 47 (2002).

MCL 211.7m states:

> Property owned by, or being acquired pursuant to, an installment purchase agreement by a county, township, city, village, or school district used for public purposes and property owned or being acquired by an agency, authority, instrumentality, nonprofit corporation, commission, or other separate legal entity comprised solely of, or which is wholly owned by, or whose members consist solely of a political subdivision, a combination of political subdivisions, or a combination of political subdivisions and the state **and is used to carry out a public purpose** itself or on behalf of a political subdivision or a combination is exempt from taxation under this act. [Emphasis added.]

Because there is no dispute that Petitioner owns the subject property and is an authority, within the meaning of MCL 211.7m and MCL 331.1, the sole issue before the Tribunal is whether the subject property (vacant land) is used for public purposes to be entitled to an exemption from ad valorem taxation under MCL 211.7m.[1]

In *City of Mt Pleasant, supra* at 54, the Michigan Supreme Court, in addressing the meaning of public purpose under MCL 211.7m, reiterated its prior position that "a 'public purpose' promotes 'public health, safety, morals, general welfare, security, prosperity, and

[1] "The Legislature is presumed to know the rules of grammar," and as the word "and" is "a conjunction, meaning 'with,' 'as well as,' or 'in addition to,'" it, naturally, follows that, due to the inclusion of the word "and" in MCL 211.7m, there are two criteria that must be met in order to qualify for an exemption under MCL 211.7m. *Auto-Owners Ins Co v All Star Lawn Specialists Plus Inc*, 303 Mich App 288, 300; 845 NW2d 744 (2013).

contentment of all the inhabitants or residents within the municipal corporation [. . . .]'" Whatever the public purpose, *a present use*, and not a future intended use, is a necessary prerequisite to exemption under MCL 211.7m:

> The language chosen by the Legislature indicates that to be tax-exempt, the property must be '*used* for public purposes.' MCL 211.7m (emphasis added). Thus, during each tax year in question, the city must have made a present use of the land that qualifies as a 'public purpose' so that the city will have 'used' the land for that purpose. While this inquiry is, of course, fact-intensive, the court must consider what steps the city has taken to move from merely holding the land to actually using it for a public purpose. *City of Mt Pleasant* at 56.

Accordingly, Petitioner's intent with respect to use of the property is irrelevant. It is Petitioner's actual use of the property during the tax periods at issue that determines its eligibility for exemption. The Tribunal finds that Petitioner, for the tax years at issue, has failed to establish an actual use of the subject vacant land that meets the criteria of a public purpose under MCL 211.7m. Petitioner has stipulated that the vacant land at issue is "held for possible future hospital and healthcare system expansion and growth." As found by the Supreme Court in *City of Mt. Pleasant*, merely holding the land is not a present or actual use that would qualify for an exemption. Petitioner argues that its situation is analogous to that of *Municipal Employees Retirement System, supra*. However, and as clearly stated by the Supreme Court in that case, the petitioner "was *statutorily required* to *hold* and *invest* assets." [Emphasis in original.] *Id* at 877. There is no similar statutory requirement of a hospital authority under MCL 331.1, *et. seq*. to hold and invest assets. Rather, MCL 331.1(1) provides that a combination of cities, villages, and townships may join to form a hospital authority and "issue bonds for the purpose of planning, promoting, acquiring, constructing, improving, enlarging, extending, owning, maintaining, and operating . . . 1 or more community hospitals and related buildings or structures and related facilities." This provision in no way mandates that land must be held by the hospital authority for future use or that doing so is part of the "planning and enlarging authority" as alleged by Petitioner. Further, while MCL 331.1(2) provides that hospitals, community hospitals, and related facilities include "the land necessary or convenient for use for the building or structure" this provision does not suggest that excess vacant land, held for possible future use, is entitled to an exemption. Petitioner has failed to establish that this vacant land is "necessary or convenient" for use of any of the buildings or structures owned by the hospital authority. Petitioner has put

forth no contentions or evidence that can be used to show the necessary present use of the subject property that would entitle Petitioner to the exemption provided in MCL 211.7m.

Given the above, the Tribunal finds that there is no genuine issue as to any material fact under MCR 2.116(C)(10) and Respondent is entitled to summary disposition in its favor as the subject property is not presently used for a public purpose that would qualify for an exemption under MCL 211.7m.

JUDGMENT

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

IT IS FURTHER ORDERED that the case is DISMISSED.

This Opinion resolves the last pending claim and closes the case.

By: Victoria L. Enyart

Entered: Sept 5, 2014
klm