

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

Mulcrone Family Trust, *et al*,  
Petitioners,

v

MTT Docket Nos. 16-005489, 16-0005547,  
16-005548, and 16-005550

City of St. Ignace,  
Respondent.

Case Type: Property Valuation  
(Uncapping of Taxable Value)

ORDER ADJOURNING PREHEARING CONFERENCES

ORDER CONSOLIDATING CASES

PROPOSED ORDER OF DISMISSAL

PROPOSED OPINION AND JUDGMENT

The Tribunal has reviewed the files in the above-captioned cases and finds that prehearing conferences were conducted in MTT Docket Nos. 16-0005547, 16-005548, and 16-005550 on December 14, 2017, and adjourned given issues relating to Respondent's representation in those cases,<sup>1</sup> the filing of other cases (i.e., MTT Docket Nos. 16-005489 and 16-005490) involving the same parties with issues of fact and law common to all of the cases that support the consolidation of the cases,<sup>2</sup> the dismissal of MTT Docket No. 16-005490 based on the untimely filing of the petition in that case,<sup>3</sup> and the issuance of a decision by the Michigan Court of Appeals upholding that dismissal.<sup>4</sup>

In that regard, the history of the cases is as follows:

1. A petition was filed on November 14, 2016, appealing the August 2, 2016 uncapping of the taxable values of Parcel Nos. 49-052-013-035-00 and 49-052-014-002-00 for the 2005 through 2014 tax years and Parcel No. 49-052-620-038-00 for the 2005 through 2015 tax years. That petition was assigned to MTT Docket No. 16-005489. The petitioner in that case (i.e., the Mulcrone Family Trust) did, however, file the wrong petition (i.e., a

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<sup>1</sup> Respondent's authorized representative was its former assessor, Christina Deeren. In that regard, no notice was provided to the Tribunal or Petitioner indicating that Ms. Deeren was no longer employed by Respondent or, more importantly, substituting another authorized representative in her place. See TTR 223(4).

<sup>2</sup> See TTR 247(3)(e). See also TTR 201(1), R 792.10118, TTR 215, and MCR 2.505(A).

<sup>3</sup> See MCL 205.735a(6). Further, the Tribunal has no "equitable powers" that would allow it to waive statutory requirements or filing deadlines. See *Electronic Data Sys Corp v Flint Twp*, 253 Mich App 538, 547-548; 656 NW2d 215 (2002).

<sup>4</sup> See the unpublished opinion *per curiam* issued by the Court of Appeals in *Effie Ellen Mulcrone and Mary Theresa Mulcrone Trust v City of St. Ignace* on October 24, 2017 (Docket No. 336773).

non-property tax petition) and failed to pay the full required fee for the filing of the right petition (i.e., a property tax petition).<sup>5</sup> As a result, the Tribunal issued an Order on November 21, 2016, holding Petitioner in default and requiring Petitioner to file an amended petition and pay the required filing fee within 14 days of the entry of the Order (“Default Order”).<sup>6</sup>

2. Although the November 21, 2016 Default Order in MTT Docket No. 16-005489 did not require Petitioner to file separate amended petitions for each parcel at issue,<sup>7</sup> Petitioner filed amended petition on December 5, 2016, appealing the August 2, 2016 uncapping of the taxable value for each parcel at issue. The amended petition for Parcel No. 49-052-013-035-00 was assigned to MTT Docket No. 16-005489, the amended petition for Parcel No. 49-052-620-038-00 was assigned to MTT Docket No. 16-005548, and the amended petition for Parcel No. 49-052-014-002-00 was assigned to MTT Docket No. 16-005549.
3. A petition was filed on November 14, 2016, appealing the August 2, 2016 uncapping of the taxable values of Parcel No. 49-052-007-004-00 for the 2005 through 2015 tax years and Parcel No. 49-052-620-033-00 for the 2005 through the 2010 tax years. That petition was assigned to MTT Docket No. 16-005490. The petitioner in that case (i.e., the Effie Ellen Mulcrone and Mary Theresa Mulcrone Trust) did, however, file the wrong petition (i.e., a non-property tax petition) and failed to pay the full required fee for the filing of the right petition (i.e., a property tax petition). As a result, the Tribunal issued an Order on November 21, 2016, holding Petitioner in default and requiring Petitioner to file an amended petition and pay the required filing fee within 14 days of the entry of the Order (“Default Order”).
4. Although the November 21, 2016 Default Order in MTT Docket No. 16-005490 did not require Petitioner to file separate amended petitions for each parcel at issue,<sup>8</sup> Petitioner filed amended petition on December 5, 2016, appealing the August 2, 2016 uncapping of the taxable value for each parcel at issue. The amended petition for Parcel No. 49-052-620-033-00 was assigned to MTT Docket No. 16-005490 and the amended petition for Parcel No. 49-052-007-004-00 was assigned to MTT Docket No. 16-005550.
5. Even though separate petitions were, as indicated above, filed to cure the default in MTT Docket No. 16-005490 with one of the two parcels at issue in that case assigned to MTT Docket No. 16-005550, the Court of Appeals addressed both parcels (i.e., Parcel Nos. 49-052-007-004-00 and 49-052-620-033-00) in affirming the Tribunal’s dismissal of MTT Docket No. 16-005490 (i.e., “[t]his case involves a dispute over the uncapping and

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<sup>5</sup> An appeal relative to the uncapping of a property’s taxable value is a property tax matter and not a non-property tax matter. See also TTR 217(a)(ii), 217(c), and 227.

<sup>6</sup> See TTR 231(1).

<sup>7</sup> Although Petitioner was not defaulted for separate petitions, it appears that the parcels originally at issue in MTT Docket No. 16-005489 are not contiguous and, as such, Petitioner would have been required to file separate petitions for each parcel. See TTR 227(2)(a).

<sup>8</sup> It also appears that the parcels originally at issue in MTT Docket No. 16-005490 are not contiguous.

reassessment of the taxable value **of two properties** belonging to petitioner”). [Emphasis added.]

Based on the above, the appeals in each case should be considered filed as of November 14, 2017. More importantly, the appeal in MTT Docket No. 16-005550 has already been considered by the Court of Appeals and found subject to dismissal.<sup>9</sup> Further, the appeals in MTT Docket No. 16-005489 and the other “companion” cases, including MTT Docket No. 16-005550, arise out of the same August 2, 2016 transaction or uncapping considered by the Court of Appeals in affirming the Tribunal’s decision to dismiss MTT Docket No. 16-005490. More specifically, the November 14, 2017 petition in MTT Docket No. 16-005489 and the amended petitions in the other companion or consolidated cases are also untimely and, as such, the Tribunal has no authority over those appeals. Therefore,

IT IS ORDERED that the prehearing conferences conducted in MTT Docket Nos. 16-0005547, 16-005548, and 16-005550 are ADJOURNED.

IT IS FURTHER ORDERED that the cases are CONSOLIDATED.

IT IS FURTHER ORDERED that the cases are DISMISSED.

### **JUDGMENT**

This is a proposed decision (“POJ”) prepared by the Michigan Administrative Hearings System. It is not a final decision.<sup>10</sup> As such, no action should be taken based on this decision. In that regard, the Tribunal will, after the expiration of the time period for the opposing party to file a response to exceptions, will review the case file, including the POJ and all exceptions and responses, if any, and:

- a. Issue a Final Opinion and Judgment (FOJ) adopting the POJ as the final decision.
- b. Issue an FOJ modifying the POJ and adopting the Modified POJ as the final decision.
- c. Issue an Order vacating the POJ and ordering a rehearing or such other action as is necessary and appropriate.

### **EXCEPTIONS**

The parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing, by mail or by electronic filing**, if available, that they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions). Exceptions are **limited** to the evidence submitted with the Motion, the Response, and any matter addressed in the POJ. There

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<sup>9</sup> See also the unpublished opinion *per curiam* issued by the Court of Appeals in *Forest Hills Cooperative v City of Ann Arbor* on December 5, 2017(Docket No. 334315) citing *Grace v Grace*, 253 Mich App 357, 362; 655 NW2d 595 (2002) (i.e., “[t]he law of the case doctrine ‘provides that if an appellate court has decided a legal issue and remanded the case for further proceedings, the legal issue determined by the appellate court will not be differently decided on a subsequent appeal in the same case where the facts remain materially the same’”).

<sup>10</sup> See MCL 205.726.

is no fee for filing exceptions and the opposing party has 14 days from the date the exceptions were mailed to or electronically served on that party (i.e., email), **if** the parties agree to service by email, to file a written response to the exceptions.<sup>11</sup>

Exceptions and responses filed by *e-mail or facsimile* will **not** be considered in the rendering of the Final Opinion and Judgment.

A copy of a party's written exceptions or response **must** be sent to the opposing party **by mail or email, if** email service is agreed upon by the parties, and proof **must** be submitted to the Tribunal demonstrating that the exceptions or response were served on the opposing party.

By Peter M. Kopke

Entered: January 4, 2018  
pmk

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<sup>11</sup> See MCL 205.726 and TTR 289(1) and (2).

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

Mulcrone Family Trust,  
Petitioner,

v

MTT Docket No. 16-005489,  
16-005547, 16-005548, and 16-005550

City Of St. Ignace,  
Respondent.

Tribunal Judge Presiding  
Steven H. Lasher

ORDER OF DISMISSAL

The Tribunal issued a Proposed Opinion and Judgment (“POJ”) on January 4, 2018. The POJ states, in pertinent part, “[t]he parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing, by mail or by electronic filing, if available**, if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions).”

Neither party has filed exceptions to the POJ.

The Administrative Law Judge’s determination that the Tribunal’s authority was not properly invoked is supported by the applicable statutory and case law. MTT Docket Nos. 16-005489, 16-005550, and other companion or consolidated cases arise out of the same transaction and uncapping issue raised before the Tribunal in MTT Docket No. 16-005490. The Michigan Court of Appeals affirmed the Tribunal’s decision to dismiss Docket No. 16-005490. The Tribunal has no authority over the appeal of the above-mentioned cases since the Petitions, for such cases, were untimely filed, and the law of the case doctrine operates to bind the parties to the earlier proceeding’s determination.<sup>1</sup>

Given the above, the Tribunal adopts the POJ and finds that dismissal of these consolidated cases is warranted.<sup>2</sup> Therefore,

IT IS ORDERED that the case is DISMISSED.

This Order resolves the last pending claim and closes this case.

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<sup>1</sup> See also the unpublished opinion *per curiam* issued by the Court of Appeals in *Forest Hills Cooperative v City of Ann Arbor* on December 5, 2017 (Docket No. 334315) citing *Grace v Grace*, 253 Mich App 357, 362; 655 NW2d 595 (2002) (i.e., “[t]he law of the case doctrine ‘provides that if an appellate court has decided a legal issue and remanded the case for further proceedings, the legal issue determined by the appellate court will not be differently decided on a subsequent appeal in the same case where the facts remain materially the same’”).

<sup>2</sup> See MCL 205.726.

### 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 required filing fee within 21 days from the date of entry of the final decision.<sup>3</sup> Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.<sup>4</sup> A copy of the motion must be served 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.<sup>5</sup> Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.<sup>6</sup>

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."<sup>7</sup> A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.<sup>8</sup> The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.<sup>9</sup>

By Steven H. Lasher

Entered: February 6, 2018  
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<sup>3</sup> See TTR 261 and 257.

<sup>4</sup> See TTR 217 and 267.

<sup>5</sup> See TTR 261 and 225.

<sup>6</sup> See TTR 261 and 257.

<sup>7</sup> See MCL 205.753 and MCR 7.204.

<sup>8</sup> See TTR 213.

<sup>9</sup> See TTR 217 and 267.