STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Wayne County Airport Authority,
Petitioner,

v

MTT Docket No. 308288,
308304, 308321, 308326,
308351, 315765, 315779,
315783, 315787, and 316019

City of Romulus,
Respondent.

Tribunal Judge Presiding
Rachel J. Asbury

FINAL OPINION AND JUDGMENT

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

BACKGROUND

On November 4, 2005, Petitioner filed a motion asking the Tribunal to resolve the legal issue of its exemption from property tax pursuant to MCL 211.7m before addressing valuation of these consolidated cases. On November 22, 2006, Respondent filed a response to Petitioner's motion, concurring in the request. The Tribunal entered an order granting Petitioner's motion on February 13, 2007. As a result, the parties filed and exchanged briefs and reply briefs on the legal issue.

The Tribunal conducted a prehearing conference in this matter on March 29, 2007. The Michigan Supreme Court published its decision in *City of Mt. Pleasant v State Tax Com*mission, 477 Mich 50, 729; NW2d 833 (2007), on March 28, 2007. At that prehearing conference, the Tribunal determined that it was necessary to allow for extended discovery and supplemental briefs on the application of *City of Mt. Pleasant* to this case. The Tribunal entered a scheduling order on April

6, 2007, setting final dates for extended discovery, filing and exchanging of briefs and reply briefs related to the applicability to this matter of the Supreme Court's decision in *City of Mt. Pleasant*, and a telephonic status conference for the scheduling of oral argument if deemed necessary.

Petitioner filed a motion for protective order on May 9, 2007, with a request for oral argument. The Tribunal entered an order on June 5, 2007, granting Petitioner's motion for oral argument on its protective order. Oral argument on Petitioner's motion for protective order was held on June 22, 2007. On August 1, 2007, the Tribunal entered an order partially granted Petitioner's motion for protective order and entered a supplemental scheduling order providing for extended discovery, final dates for filing motions for summary disposition, briefs and reply briefs on the issue of exemption, a status conference, and scheduling oral argument on the issue of whether the subject property was exempt from taxation for the years at issue for January 21, 2008.

On January 4, 2008, Petitioner filed a motion for summary disposition on the issue of whether the subject property was exempt from taxation for the tax years then at issue. On January 16, 2008, Respondent filed an answer to Petitioner's motion for summary disposition. On January 16, 2008, the Tribunal conducted a telephonic status conference at which time, oral argument on the issue of exemption was rescheduled for February 1, 2008. The Tribunal, in response to a request from the parties, entered an order on February 12, 2008, scheduling oral argument for February 20, 2008.

Oral argument on the issue of whether the subject properties were exemption from taxation for the tax years at issue was held on February 20, 2008. Petitioner was represented by Jeffrey Hyman. Respondent was represented by Jerome Pesick.

INTRODUCTION

The properties at issue and the true cash value, state equalized value, and taxable value of each are as follows:

Parcel Number	Year	TCV	SEV	TV
80-131-01-0001-300	2004	$ 948,600	$ 474,300	$ 474,300
	2005	$1,870,600	$ 935,300	$ 772,808
	2006	$2,601,600	$1,300,800	$ 798,310
	2007	$3,446,000	$1,723,000	$ 827,847
80-131-01-0013-000[1]	2004	$ 207,400	$ 103,700	$ 103,700
80-132-99-0002-000	2004	$ 187,400	$ 93,700	$ 93,700
	2005	$ 260,200	$ 130,100	$ 95,855
80-132-99-0005-000	2004	$ 40,600	$ 20,300	$ 20,300
	2005	$ 56,200	$ 28,100	$ 20,799
	2006	$ 104,200	$ 52,100	$ 21,451
	2007	$ 138,000	$ 69,000	$ 22,244
80-132-99-0007-701	2004	$1,220,400	$ 610,200	$ 610,200
	2005	$1,695,000	$ 847,500	$ 624,234
	2006	$2,467,600	$1,233,800	$ 644,833
	2007	$3,268,400	$1,634,200	$ 668,691
80-132-99-0019-000	2004	$ 27,200	$ 13,600	$ 13,600
	2005	$ 37,800	$ 18,900	$ 13,912
	2006	$ 70,200	$ 35,100	$ 14,317
	2007	$ 93,000	$ 46,500	$ 14,902
80-135-99-0001-700[2]	2004	$2,318,000	$1,159,000	$1,159,000
	2005	$3,219,400	$1,609,700	$1,185,656
	2006	$3,727,000	$1,863,500	$1,224,783
	2007	$4,936,400	$2,468,200	$1,270,099
80-135-99-0016-000	2004	$ 438,200	$ 219,100	$ 219,100
	2005	$ 608,600	$ 304,300	$ 224,139
	2006	$1,127,400	$ 563,700	$ 231,535

[1] Parcel No. 80-131-01-0013-000 was consolidated with parcel no. 80-131-01-0001-300 for tax years after the 2004 tax year

[2] This parcel was referred to as Parcel No. 80-135-99-0009-700 in the parties' pleadings. Respondent has determined that there was a typographical error and that the correct parcel no. for this property is 80-135-99-0001-700.

	2007	$1,493,200	$ 746,600	$ 240,101
80-136-99-0001-002	2004	$ 28,000	$ 14,000	$ 14,000
	2005	$ 38,800	$ 19,400	$ 14,322
	2006	$ 71,000	$ 35,900	$ 14,794
	2007	$ 95,000	$ 47,500	$ 15,346
80-136-99-0003-000	2004	$1,760,800	$ 880,400	$ 880,400
	2005	$2,445,600	$1,222,800	$ 900,649
	2006	$3,052,800	$1,526,400	$ 930,370
	2007	$4,043,400	$2,021,700	$ 964,793

Petitioner refers to 10 properties as follows:

Parcels 1 through 6[3]	Residential Noise Parcels
Parcels 7 and 8[4]	Other Noise Parcels
Parcel 9[5]	Non-noise County Parcel
Parcel 10[6]	Unknown Parcel

These 10 parcels are located in the City of Romulus, within close proximity of Detroit Metropolitan Wayne County Airport.

Petitioner is an airport authority created pursuant to the Michigan Aeronautics Code, 1945 PA 327, MCL 259.1 to 259.208. Prior to the creation of Petitioner, Wayne County had control over the subject properties. A Part 150[7] study was done and a Noise Compatibility Plan was adopted by Wayne County and approved by the Federal Aviation Authority (FAA). The grant agreement entered into by Wayne County and the FAA approved a project for the airport which included the following, "[a]cquire land for noise compatibility . . . including relocation assistance; Fine

[3] Parcel Nos. 80-131-99-0013-000, 80-132-99-0002-000, 80-132-99-005-000, 80-132-99-0007-701, 80-135-99-0001-700, and 80-136-99-0001-002
[4] Parcel Nos. 80-135-99-0016-000 and 80-136-99-0003-000
[5] Parcel Nos. 80-132-99-0019-000
[6] Parcel Nos. 80-131-01-0001-300
[7] Federal Aviation Regulation Part 150 Noise Compatibility Plan

grade and turf noise berms (Phase I and II) and plans and specifications for noise berms (Phase I)."[8]

PETITIONER'S CONTENTIONS

Petitioner argues that under a Federal Aeronautics Regulation (FAR) Part 150 agreement, the FAA has established land use guidelines for determining the "sensitivity of specific land uses with various levels of aircraft noise," and in part pertinent to this matter provided,

> Where, under those guidelines, a specific land use is adversely impacted by ("noncompatible" with) the level of aircraft noise in the area where the land is located, FAR Part 150 provides for the airport operator to adopt and implement a plan to remove the noncompatible land use or to convert it to a use that is not adversely affected by (that is "compatible" with) the level of aircraft noise in the area.[9]

Petitioner asserts that the noise plan entered into in December 1992 required that residences,

> affected by DNL 75 and greater noise exposure levels . . . be acquired and they be relocated to an area not affected by noise. . . .The primary objective of this action is to remove incompatible land uses or convert them to compatible uses. . . . Wayne County is responsible in accordance with AIP Grant assurances to assure that the re-use of acquired properties is compatible with airport noise exposure.[10]

Petitioner asserts that the residential noise parcels (see list above) were acquired, the houses demolished within one year of acquisition, and the land used "solely as a vacant noise barrier to Airport operations."[11] Petitioner asserts that when it purchased the other noise parcels (see list above), they "were vacant and within a DNL from Airport operations of 70. . . . Since their purchase, the Other Noise Properties have been used solely as a vacant noise barrier to Airport

[8] Petitioner's exhibit C, Motion for Summary Disposition; Grant Agreement, page 1
[9] Petitioner's June 14, 2006 brief, page 3
[10] Petitioner's June 14, 2006 brief, page 3
[11] Petitioner's June 14, 2006 brief, page 6

operations."[12] Petitioner asserts that Wayne County purchased the non-noise parcel with its general economic development funds and that parcel should be assessed to the County, not Petitioner. Further, Petitioner asserted that it has no knowledge of and, to the best of its knowledge and belief, neither owns nor controls the unknown parcel.

Petitioner contends that the noise parcels are exempt from tax pursuant to MCL 211.7m. Petitioner states that it was created under the Michigan Aeronautics Code and is a qualifying government unit for purposes of 211.7m. Petitioner asserts that *Rockwell Spring and Axle Co v Romulus*, 365 Mich 632; 114 NW2d 166 (1962), established that "[t]he basic purpose of the Detroit-Wayne Metro Airport was, and is, to render necessary services to the public."[13] As the Airport carries out the important and qualifying public purpose of providing air transportation to the general public and noise is an unfavorable collateral consequence, alleviating that noise by purchasing the adversely impacted residences is "clearly a public purpose directly associated with Airport operations."[14] Petitioner asserts that its acquisition of property under an FAR Part 150 noise compatibility plan "is clearly incidental to operation of an airport and, therefore, authorized by"[15] MCL 259.126(1), which provides,

> Every political subdivision in this state is hereby authorized through its governing body to acquire property, real and personal, for the purpose of establishing, constructing, and enlarging airports, landing fields and other aeronautical facilities, and to acquire, establish, construct, enlarge, improve, maintain, equip, operate and regulate such airports, landing fields and other aeronautical facilities, and other property incidental to their operation.

[12] Petitioner's June 14, 2006 brief, page 6
[13] Petitioner's June 14, 2006 brief, page 11
[14] Petitioner's June 14, 2006 brief, page 11
[15] Petitioner's June 14, 2006 brief, page 12

Petitioner contends that MCL 259.132 "expressly declares a political subdivision's exercise of power authorized by the Code to be a public purpose,"[16]

> The . . . acquisition, establishment, construction, enlargement, improvement, maintenance, equipment and operation of airports, landing fields and other aeronautical facilities, and the exercise of any other powers herein granted to political subdivisions of this state, are hereby declared to be public, governmental and municipal functions, exercised for a public purpose, and matters of public necessity.

And further, quoting MCL 259.116(c) and (e), that the Michigan Aeronautics Code provisions relating to public airport authorities "are even more explicit,"[17]

> (c) An authority has the power and duty of planning, promoting, extending, maintaining, acquiring, purchasing, constructing, improving, repairing, enlarging, and operating all airports and airport facilities under the operational jurisdiction of or owned by the authority.
> . . .
> (e) An authority may . . . acquire and hold, real and personal property, . . . as an authority may deem necessary either for the construction of any airport facilities or for the efficient operation or for the extension of any airport facilities acquired or constructed or to be constructed under this chapter, . . .

Petitioner asserts that the Michigan Aeronautics Code specifically includes noise abatement or noise buffers in the definition of airport facilities as well as "any and all other improvements or facilities . . . deemed by the authority to be in the public interest." MCL 259.109(b)(ii) and (vi).

As to the Other Noise Parcels, Petitioner asserts that these were vacant when purchased under the noise plan provisions to create "a larger contiguous land mass, . . . for noise compatible use."[18] Petitioner admits that the residential noise parcels and the other noise parcels have been vacant since they were purchased and assert that the parcels, "have nevertheless been 'used' for and to carry out a public purposes within the meaning of MCL 211.7m, even though that use has not

[16] Petitioner's June 14, 2006 brief, page 12
[17] Petitioner's June 14, 2006 brief, page 12
[18] Petitioner's June 14, 2006 brief, page 16

been an actual physical use."[19] In support of its position that if an exemption is conditioned on the use or occupancy of the property, "vacant land qualifies for exemption if the absence of actual physical use is consistent with the owner's exempt purpose,"[20] Petitioner cites *Kalamazoo Nature Center, Inc v Cooper Twp*, 104 Mich App 657; 305 NW2d 283 (1981), in which the Court held that "[n]othing in the statute requires physical use."[21]

Petitioner states that it is its intention, and that of Wayne County, to "convert the Noise Parcels to noise compatible productive commercial and industrial use by inclusion in the Pinnacle Aeropark."[22] Petitioner asserts that Pinnacle Aeropark is a Wayne County plan for the utilization of 1,300 acres adjacent to the Airport which includes "approximately 500 acres of land purchased under the Noise Plan, (including the Noise Parcels), . . . [which] would enable Wayne County to convert property acquired under the Noise Plan to productive noise compatible uses."[23] The Aeropark is a planned future development for which no construction has begun, no development team identified, and no tenants secured. Petitioner asserts that the future inclusion of the noise parcels in the Aeropark does not precluded exemption of the parcels in the tax years at issue.

In its brief on the applicability of *City of Mt. Pleasant v State Tax Commission*, 477 Mich 50; 729 NW2d 833 (2007), Petitioner asserts the Court's opinion held that economic development is a qualifying public purpose under MCL 211.7m, and that, "[a]t a minimum, . . . a municipality's

[19] Petitioner's June 14, 2006 brief, page 16
[20] Petitioner's June 14, 2006 brief, page 16
[21] Petitioner's June 14, 2006 brief, page 16
[22] Petitioner's June 14, 2006 brief, page 15
[23] Petitioner's June 14, 2006 brief, page 16

acquisition, holding, preparation and marketing of land for economic development purposes does not disqualify the property from exemption."[24] Petitioner contends that the Supreme Court "did not disturb the rule that vacant land not being actually physically used qualifies for exemption if the absence of actual physical use is consistent with the owner's exempt purpose."[25] Petitioner contends that the exempt purpose in this matter "is to operate the Airport, and it is consistent with that purpose to hold vacant land surrounding the Airport as a noise barrier. . . .Until and if the subject property is employed in an active noise compatible use . . . its only possible noise compatible use is as vacant parcels."[26] Petitioner asserts that this case is very different from *City of Mt. Pleasant*, in that the subject property was not purchased for resale to a private party for economic development purposes.

Petitioner states that there is no statutory support for Respondent's assertion that the subject property is not entitled to an exemption for an indefinite period of time and that it has been exempt too long. Petitioner argues that MCL 259.116(1)(c) specifically allows Petitioner to hold the land, not just acquire it. Petitioner contends that "[c]ontrary to Respondent's assertions, the subject property continues to be needed and used as a noise barrier."[27] Petitioner further argues that Respondent's position that the "conception, attempted marketing, and attempted development of Pinnacle Aeropark terminated the use and need to use the subject property as a vacant noise barrier"[28] makes no sense.

RESPONDENT'S CONTENTIONS

[24] Petitioner's November 14, 2007 brief, page 3
[25] Petitioner's November 14, 2007 brief, page 4
[26] Petitioner's November 14, 2007 brief, page 4
[27] Petitioner's November 14, 2007 brief, page 7
[28] Petitioner's November 14, 2007 brief, page 8

Respondent asserts that the subject parcels are not being used for a public purpose and are taxable. Respondent argued that Wayne County purchased 1,300 acres which it utilized in the development of the Pinnacle Project[29] concept. Respondent asserts that the Pinnacle Project property, of which several of the subject properties are part, is being "held by Petitioner while it is marketed for private development and sale to private for-profit entities."[30] Respondent asserts that the Pinnacle Project is designed to diversify the tax base from predominantly industrial to a mixture of industrial, service, and technology.

Respondent asserts that the Part 150 Noise Agreement between Wayne County and the FAA required that the "property was to be used for 'noise compatibility' purposes . . . or for 'airport development purposes.'"[31] Respondent further asserts that the agreements required Wayne County, "when the land is no longer needed for such purposes, [to] dispose of such land at fair market value at the earliest practicable time."[32]

Respondent argues that because the Courts have never held that properties used as noise barriers were "exempt from taxation under MCL 211.7m,"[33] Petitioner's standard of proof in support of this theory for exemption from taxation is that of "beyond a reasonable doubt."[34]

[29] Respondent refers to Pinnacle Project. Petitioner refers to the same development as Pinnacle Aeropark.
[30] Respondent's June 15, 2006 brief, page 2
[31] Respondent's June 15, 2006 brief, page 4
[32] Respondent's June 15, 2006 brief, page 4
[33] Respondent's November 19, 2007 brief, page 2
[34] Respondent's November 19, 2007 brief, page 2

Respondent argues that Petitioner must demonstrate both ownership and use to carry out a public purpose in order to qualify for an exemption under MCL 211.7m. Respondent asserts that the purchase of the property using FAA grants is not, in and of itself, dispositive of the issue of whether the property is used for a public purpose and therefore exempt. In support of its contentions, Respondent argues that "in the context of assessment and exemption, the holding of property for purposes of private development is not 'use for a public purpose.' For this reason, the Pinnacle Project property at issue in the instant case is clearly taxable."[35] In support of its position, Respondent cites *Traverse City v East Bay Township*, 190 Mich 327; 157 NW 85 (1916), in which the Court held that land held by the city for the future development of a power plant was not exempt. The Court in that case stated,

> The lands not only are not used for any public purpose, but they are not used for any purpose. . . . no attempt has, to the present time, been made to utilize them for the development of power, which is the only use of value that can be made of them. . . . the use which warrants exemption mentioned in the statute is a present use, and not an indefinite prospective use.

Respondent further supports its position with the Michigan Supreme Court's decision in *Rural Agricultural School District No. 1. v Blondell*, 251 Mich 525; 232 NW 377 (1930), in which the Court held that "exemption of property from taxation, made contingent upon use for public purposes, does not extend to a future intended use, but is limited to present use."[36] The Court found in that case that the property held by the plaintiff school district was not exempt, despite being held for future school-related uses.

[35] Respondent's June 15, 2006 brief, page 8
[36] Respondent's June 15, 2006 brief, page 12

Respondent differentiates this case from the above cases in that the subject properties are currently subject to taxation and "when ultimately utilized in the Pinnacle Project, *will still be subject to taxation*."[37] (Emphasis in original) Respondent asserts that even completion of the Pinnacle Project will not make the subject properties qualified for exemption.

Respondent asserts that remaining as a vacant, unused noise barrier is not a productive use as required by the FAA grants and is "arguably, no 'use' at all."[38]

Respondent argues that this case is distinguishable from *Municipal Employees Retirement Systems of Michigan v Charter Township of Delta*, 478 Mich 876; 702 NW2d 665 (2005), in which the Court found that the vacant property held solely as part of statutorily mandated investment for funding a township employee pension fund was exempt. Respondent specifically points to the Court's determination that the statute involved "required that the property be 'used for no other purpose, other than to be held and invested to support the pension fund."[39] Respondent asserts that in this matter, "instead of requiring, essentially, that the property not be sold or developed, the FAA Grants require precisely the opposite,"[40] which requirement, Respondent asserts, clearly supports its position that the property is taxable.

Respondent contends that Petitioner cannot hold the property as a noise barrier and seek exemption under that status, while simultaneously marketing the property as part of the Pinnacle Project. And further, that if they were needed for noise abatement, the subject properties have

[37] Respondent's June 15, 2006 brief, page 12
[38] Respondent's June 15, 2006 brief, page 13
[39] Respondent's June 15, 2006 brief, page 14
[40] Respondent's June 15, 2006 brief, page 14

"been suited for development for other purposes for a significant period of time – arguably as long as the neighboring parcels within the Pinnacle area have been utilized for some . . . productive use,"[41] thus making the properties unqualified for exemption.

In its brief filed June 15, 2006, Respondent cites to the Michigan Court of Appeals decision in *City of Mt. Pleasant v State Tax Commission* in support of its position, arguing that the Court of Appeals found that the property purchased by the petitioner in that case, and subsequently marketed for future private development and sale as residential property, was not tax exempt. The Court of Appeals held that "[b]ecause the property here was not actively, actually used by petitioner, we conclude that the tribunal did not make an error . . . in holding that petitioner's land was not exempt."[42] Respondent argued that in that matter the property was "clearly being marketed for private development."[43] Respondent asserts that the subject properties in this matter are being similarly marketed which "renders the property taxable."[44] In its brief on the applicability of the holding by the Michigan Supreme Court that the properties in *City of Mt. Pleasant v State Tax Commission*, 477 Mich 50; 729 NW2d 833 (2007), were exempt, Petitioner asserts the properties within the Pinnacle Aeropark "have not actually been used for the public purpose of economic development,"[45] and therefore are not exempt on that basis.

Respondent asserts that the subject properties, as part of Pinnacle Aeropark, were "identified for development with airport technology and light manufacturing uses. . . . [and] Wayne County also

[41] Respondent's June 15, 2006 brief, page 15
[42] Respondent's June 15, 2006 brief, page 9
[43] Respondent's June 15, 2006 brief, page 10
[44] Respondent's June 15, 2006 brief, page 11
[45] Respondent's November 19, 2007 brief, page 1

intended to construct utilities, such as sanitary sewer lines and road improvements."[46] Respondent contends that no infrastructure was installed and no development occurred. Based on the "project having gone nowhere,"[47] Respondent placed the properties on tax rolls for the 2004 tax year. Respondent argues that, based on criteria established in the Michigan Supreme Court's opinion in *City of Mt. Pleasant*, and a fact intensive analysis of the status of the subject properties, it cannot be demonstrated that the properties herein at issue are actually being used for economic development and thus are not exempt from taxation on that basis.[48]

Respondent agrees that the definition of airport facilities in section 109 of the Michigan Aeronautics Code, 1945 PA 327, MCL 259.109, includes property used for noise abatement, but asserts that the legislative determination of public function or purpose in the act only includes the acquisition of land by an authority for noise abatement. Respondent contends that the provisions in the Michigan Aeronautics Code relate to the acquisition of land through eminent domain and not tax exemptions. Respondent argues that had the Legislature "sought to exempt property from taxation using a statute aside from the General Property Tax Act,[49] it has done so in straightforward terms that are not phrased in eminent domain terminology."[50] Respondent further asserts that the language in the Michigan Aeronautics Code is "too broad for that definition to control which airport properties are tax-exempt."[51] Respondent asserts that the Michigan

[46] Respondent's November 19, 2007 brief, page 3
[47] Respondent's November 19, 2007 brief, page 4
[48] Respondent's November 19, 2007 brief, page 8. Respondent asserts that there have been no attempts to plan to prepare the properties for development; no attempts to combine, split, or otherwise reconfigure to prepare them for development or to appeal to potential users; no approval or authorization of infrastructure; no agreements for the marketing of the properties; no offers to sell, lease, or purchase have been made; and no properties have been sold or leased for any economic developments.
[49] General Property Tax Act, 1893 PA 206, MCL 211.1 to 211.157
[50] Respondent's November 19, 2007 brief, page 12
[51] Respondent's November 19, 2007 brief, page 13

Aeronautics Code cannot be controlling because *Mt. Pleasant* requires that the property be used for the public purpose and the Code only requires an intent to use the property for the public purpose. Respondent argues that the "more significant error"[52] in Petitioner's position is that the language in the Michigan Aeronautics Code "does not control whether a given use of property is use for a public purpose such that the property is tax exempt under MCL 211.7m."[53] Respondent reasons that in *Mt. Pleasant*, the Supreme Court did not "rely on statutes authorizing municipalities . . . to engage in economic development activities to conclude that property used for economic development is used for a public purpose, . . . but analyzed whether a particular use of property was use for a public purpose such that the property was exempt." [54] Respondent concludes that the required narrow construction of the statutory exemption for properties 'used to carry out a public purpose' does not encompass property purportedly used as an airport noise barrier."[55] Respondent asserts that the fact that the subject properties are "scattered over an area stretching more than a mile . . . south of the Airport [and] interspersed with properties . . . acquired for Pinnacle Aeropark,"[56] the properties are not a noise barrier "because they do not block noise associated with Metro Airport. . . . They are simply vacant properties."[57] And further contends that, even if the subject properties are being used as a noise barrier, that use would not require that they sit vacant and unproductive, in perpetuity, especially as the FAA requires the properties be returned to economically productive use.

[52] Respondent's November 19, 2007 brief, page 14
[53] Respondent's November 19, 2007 brief, page 14
[54] Respondent's November 19, 2007 brief, page 14
[55] Respondent's November 19, 2007 brief, page 15
[56] Respondent's November 19, 2007 brief, page 16
[57] Respondent's November 19, 2007 brief, page 16

Respondent further contends that some of the neighboring parcels, not part of this appeal, are used for agricultural and residential purposes and one parcel, not part of this appeal, is directly across from the Airport. That these properties are not needed for noise abatement purposes supports Respondent's position that the subject properties are no longer, if they ever were, needed as a noise barrier.

Respondent argues that as use as a noise barrier will not qualify the property for exemption and there is no economic development use, Petitioner must prove that the use as a noise barrier "promotes the public health, safety, welfare, and morals,"[58] to support a public purpose that will exempt the properties. Respondent asserts that Petitioner has not proven that a public purpose is served by the use to which the properties have been put for the tax years at issue.

STANDARD OF REVIEW UNDER MCR 2.116(C)(8) AND MCR 2.116(C)(10)

A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the basis of the pleadings alone. The purpose of such a motion is to determine whether the plaintiff has stated a claim upon which relief can be granted. The motion should be granted if no factual development could possibly justify recovery. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). *Beaudrie v Henderson,* 465 Mich 124; 631 NW2d 308.

A motion for summary disposition under MCR 2.116(C)(10) will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is

[58] Respondent's November 19, 2007 brief, page 2

entitled to judgment as a matter of law. *Smith v Globe Life Insurance*, 460 Mich 446, 454-55; 597 NW2d 28 (1999). In *Occidental Dev LLC v Van Buren Twp*, MTT Docket No. 292745, March 4, 2004, the Tribunal stated the standards governing motions for summary dispositions as follows:

> Motions for summary disposition are governed by MCR 2.116. A motion for 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. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). *JW Hobbs Corp v Mich Dep't of Treasury*, Court of Claims Docket No. 02-166-MT (January 14, 2004). This particular motion has had a longstanding history in the Tribunal. *Kern v Pontiac Twp, supra*; *Beerbower v Dep't of Treasury*, MTT Docket No. 73736 (November 1, 1985); *Lichnovsky v Mich Dep't of Treasury, supra; Charfoos v Mich Dep't of Treasury*, MTT Docket No. 120510 (May 3, 1989); *Kivela v Mich Dep't of Treasury*, MTT Docket No. 131823.

In *Quinto v Cross & Peters Co*, 451 Mich 358, 362-63; 547 NW2d 314 (1996), the Michigan Supreme Court set forth the following standards for reviewing motions for summary disposition brought under MCR 2.116(C)(10):

> In reviewing a motion for summary disposition under MCR 2.116(C)(10), the trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed 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 affidavits or other documentary evidence show 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. *Neubacher v Globe Furniture Rentals*, 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 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. *McCart v J Walter Thompson*, 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. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1992). In the event, however, it is determined an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied. *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

FINDINGS OF FACT

The subject properties were acquired by Wayne County when it operated the Detroit Metropolitan Wayne County Airport under the "Detroit Metropolitan Wayne County Airport Federal Aviation Regulation Part 150 Noise Compatibility Plan," which was approved and funded by the Federal Aviation Administration and authorized by the Michigan Aeronautics Code. Petitioner, Wayne County Airport Authority, was created pursuant to the Michigan Aeronautics Code, 1945 PA 327, MCL 259.1 to 259.208, and since its creation has had exclusive operational jurisdiction of the parcels at issue, except the properties identified as "Non-Noise Parcels," current parcel no. 80-132-99-0019-000, and former parcel nos. 80-131-01-0057-300 and 80-131-01-0008-300.

Federal Aviation Regulations Part 150 prescribes land use guidelines for determining the sensitivity of specific land uses with various levels of aircraft noise. Measurements of Day-Night Average Sound Level (DNL) are required to be made and incompatible uses or uses sensitive to noise, based on certain levels, are determined by the regulations. Pursuant to the Noise Plan,

certain residential parcels affected by DNL of 75 or higher were purchased and the owners relocated. For DNL between 70 and 75, owners could request sound insulation instead of sale. The property could then be rezoned for a compatible use. Each residential noise parcel, when purchased, had a house on it, which was demolished within one year and since demolition the parcel has been used as a vacant noise barrier to Airport operations. The other noise properties were vacant when purchased and since acquisition have been used as vacant noise barriers for Airport operations.

The subject properties at issue in this matter are all vacant and are all being used solely as noise barrier properties for Airport operations pursuant to a Part 150 FAA Noise Compatibility Plan.

Pinnacle Aeropark is a business and industrial project, conceived by Wayne County, involving approximately 1,200 to 1,300 acres, the purpose of which was to stimulate private investment and economic development in the area around the Detroit Metropolitan Wayne County Airport. The Aeropark includes the properties at issue in this appeal. The Tribunal finds that although plans for future development may have begun, there was no marketing specific to the subject properties done during the tax years at issue, no construction begun, no infrastructure installed, and no actual development activity. The subject properties were vacant for all the tax years at issue.

CONCLUSIONS OF LAW

Section 7m of the General Property Tax Act, 1893 PA 206, 211.1 to 211.157, provides for the exemption from taxation of certain property used for a public purpose:

> 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.

The Legislature granted control over aeronautics in this state through the enactment of the Michigan Aeronautics Code, 1945 PA 327, MCL 259.1 to 259.208. The title of the act provides, in parts pertinent to this matter:

> AN ACT relating to aeronautics in this state; . . . providing for the acquisition, development, and operation of airports, landing fields, and other aeronautical facilities by the state, by political subdivisions, or by public airport authorities; providing for the incorporation of public airport authorities and providing for the powers, duties, and obligations of public airport authorities; . . . and making uniform the law with reference to state development and regulation of aeronautics.

The exclusivity of this legislative grant is made clear in the purpose section of the Michigan Aeronautics Code:

> It is hereby declared that the purpose of this act is to further the public interest and aeronautical progress by providing for the protection and promotion of safety in aeronautics; by cooperating in effecting a uniformity of the laws relating to the development and regulation of aeronautics in the several states; by revising existing statutes relative to the development and regulation of aeronautics so as to grant to a state agency such power and impose upon it such duties that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property within such jurisdiction, may develop a statewide system of airports, may cooperate with and assist the political subdivisions of this state and others engaged in aeronautics, and may encourage and develop aeronautics; by establishing uniform regulations, consistent with federal regulations and those of other states, in order that those engaged in aeronautics of every character may so engage with the least possible restriction, consistent with the safety and the rights of others; and by providing for cooperation with the federal authorities and the authorities of this state to eliminate costly and unnecessary duplication of functions. MCL 259.1

Section 110 of the Michigan Aeronautics Code provides:

> (1) Except as otherwise provided in this chapter, an authority created under or pursuant to this section shall be a political subdivision and instrumentality of the local government that owns the airport and shall be considered a public agency of the local government for purposes of state and federal law,

and further requires cooperation with the FAA and federal government "as necessary to obtain FAA approval of the transfers contemplated by this chapter and to obtain recognition of the authority as the sponsor with respect to the qualified airport." MCL 259.110(2)

Section 7(b) of the Michigan Aeronautics Code defines political subdivision as

> a county, city, village, or township of this state, and any other political subdivision, public corporation, authority, or district in this state that is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate airports, landing fields, and other aeronautical facilities. MCL 259.7

MCL 259.109(b) of the Michigan Aeronautics Code provides:

> (b) "Airport facilities" means any of the following at an airport:
>
> . . . (ii) Real or personal property, and easements above, on, or under the surface of real or personal property, used or intended to be used for over-flight, *for noise abatement or noise buffers*, for clear zones, or for side transition zones. (Emphasis added)

MCL 259.114(11) of the Michigan Aeronautics Code provides, "An authority shall work collaboratively with appropriate local governmental units in the implementation of any federally sanctioned and funded programs for the mitigation of aircraft noise and fuel fumes."

MCL 259.116 (1) provides, in pertinent part:

> An authority is a public body corporate with the following powers:
> . . . (c) An authority has the power and duty of planning, promoting, extending, maintaining, acquiring, purchasing, constructing, improving, repairing, enlarging, and operating all airports and airport facilities under the operational jurisdiction of or owned by the authority.

> . . . (e) An authority may take by grant, purchase, devise, or lease, or by the exercise of the right of eminent domain, or otherwise acquire and hold, real and personal property, in fee simple or any lesser interest or easement, as an authority may deem necessary either for the construction of any airport facilities or for the efficient operation or for the extension of any airport facilities acquired or constructed or to be constructed under this chapter, and, except as otherwise provided by this act, to hold in its name, lease, and dispose of all real and personal property owned by or under the operational jurisdiction of the authority. . . . The acquisition of any land by an authority for an airport or airport facilities in furtherance of the purposes of the authority, and the exercise of any other powers of the authority, *are hereby declared as a matter of legislative determination to be public, governmental and municipal functions, purposes and uses exercised for a public purpose, and matters of public necessity*. (Emphasis added)

MCL 259.132 of the Michigan Aeronautics Code reiterates the Legislature's declaration that certain activities of an authority are deemed a public purpose:

> The acquisition of any lands for the purpose of establishing airports, landing fields or other aeronautical facilities; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment and operation of airports, landing fields and other aeronautical facilities, and the exercise of any other powers herein granted to political subdivisions of this state, are hereby declared to be public, governmental and municipal functions, exercised for a public purpose, and matters of public necessity.

MCL 259.126 of the Michigan Aeronautics Code provides:

> Every political subdivision in this state is hereby authorized through its governing body to acquire property, real and personal, for the purpose of establishing, constructing, and enlarging airports, landing fields and other aeronautical facilities, and to acquire, establish, construct, enlarge, improve, maintain, equip, operate and regulate such airports, landing fields and other aeronautical facilities, and other property incidental to their operation.

The Court of Appeals set forth the applicable principles of statutory construction in *Rose Hill Center, Inc* v *Holly Twp*, 224 Mich App 28; 568 NW2d 332 (1997):

> The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature in enacting a provision. Statutory language should be construed reasonably, keeping in mind the purpose of the statute. The first criterion in determining intent is the specific language of the statute. If the statutory language is clear and unambiguous, judicial construction is neither

> required nor permitted, and courts must apply the statute as written. However, if reasonable minds can differ regarding the meaning of a statute, judicial construction is appropriate. (Citations omitted)

The parties agree that the subject properties are covered by an FAA Regulation Part 150 Noise Compatibility Plan which requires Petitioner to provide a noise barrier utilizing the designated parcels to establish noise buffers for the purpose of noise abatement. The parties disagree as to whether that use is one for a public purpose. Petitioner asserts that the use as a noise buffer and barrier is a public purpose and the subject properties are exempt from taxation under the General Property Tax Act for the tax years at issue. Respondent argues that the use is not a use for a public purpose and the subject properties are not put to any use that is a public purpose use and thus are not exempt from taxation under the General Property Tax Act for the tax years at issue.

As a general rule, tax exemption statutes are to be strictly construed in favor of the taxing unit. *Kalamazoo Nature Center v Cooper Township*, 104 Mich App 657; 305 NW2d 283 (1981), *Ladies Literary Club v Grand Rapids*, 409 Mich 748; 298 NW2d 422 (1980) Exemptions are not to be lightly given. *David Wolcott Kendall Memorial School v City of Grand Rapids*, 11 Mich App 231; 160 NW2d 778 (1968). Tax exemptions do not arise by implication. The legislature's intention to grant the exemption must be expressed in clear and unmistakable terms or appear by necessary implication from the language used in the statute. *Detroit v Detroit Commercial College*, 322 Mich 142, 148-149; 33 NW2d 737 (1948). Since exemptions are not favored, the burden rests on the one asserting a right thereto to establish its claim.

While there is no dispute that it is Petitioner’s burden to prove that the exemption is applicable to the subject properties, the parties disagree as to the proper standard to be used in this case. In

ProMed Healthcare v City of Kalamazoo, 249 Mich App 490; 644 NW2d 47 (2002), the Court discussed the various burden of proof standards that have been applied over the years by the Tax Tribunal and concluded that "the beyond a reasonable doubt standard applies only when a petitioner before the Tax Tribunal attempts to establish a class of exemptions; the preponderance of the evidence standard applies to a petitioner's attempts to establish membership in an already exempt class." *Id.* at 494. There is no question that the public purpose exemption is an established class of exemptions under the General Property Tax Act. This is not a situation in which a petitioner sought to establish a new class of exemption or to include an activity not previously designated as a use for a public purpose into the class of property exempt based on its public purpose use under section 211.7m. Instead, Petitioner attempts to establish that its use of the property in question is a public purpose use, that is to establish that its use falls within the exemption established under MCL 211.7m. Therefore, preponderance of the evidence is the applicable standard for Petitioner's burden of proof.

To qualify for exemption under MCL 211.7m, the statute requires that the property,

1. Must be owned or being acquired by a county, township, city, village or school district or owned or being acquired by an agency, authority, instrumentality, nonprofit corporation, commission, or other separate legal entity.
2. Is used to carry out a public purpose itself or on behalf of a political subdivision or a combination.

Petitioner's statement that "the subject property is exempt from tax because it was purchased and has been used for Airport noise mitigation purposes. Nothing more need be established," is not sufficient to resolve this issue. The Tribunal agrees with Respondent that the "purchase of the

property at issue via the FAA Grants . . . is **not** dispositive in and of itself."[59] (Emphasis in original) Further inquiry and analysis is required.

Petitioner is a properly formed authority, which controls the subject properties and those properties are under its sole operational direction. Petitioner meets the first requirement under the statutory criteria. The controversy in this matter is whether the subject properties are used to carry out a public purpose.

The title of the Michigan Aeronautics Code[60] states that the purpose of the Act is "making uniform the law with reference to state development and regulation of aeronautics."[61] The Legislature created the State Aeronautics Commission and granted the Commission the power of ". . . providing for the acquisition, development, and operation of airports, landing fields, and other aeronautical facilities by the state, by political subdivisions, or by public airport authorities; . . ."[62] The Michigan Aeronautics Code defines airport facilities to include "[r]eal or personal property, . . . used or intended to be used for over-flight, *for noise abatement or noise buffers*, for clear zones, or for side transition zones. "[63] (Emphasis added) The Michigan Aeronautics Code further, clearly and unambiguously, provides at section 116 of the Act that "any land [acquired] by an authority for an airport or airport facilities in furtherance of the purposes of the authority, . . . and the exercise of any other powers of the authority, *are hereby declared as a matter of legislative determination to be public, governmental and municipal functions, purposes and uses*

[59] Respondent's June 15, 2006 brief, page 7
[60] Michigan Aeronautics Code, 1945 PA 327, MCL 259.1a to 259.208
[61] Michigan Aeronautics Code, 1945 PA 327, MCL 259.1a to 259.208, title of the Act
[62] *Id*
[63] MCL 259.109(b)(ii)

exercised for a public purpose, and matters of public necessity."[64] Section 132 of the Act reiterates that "[t]he acquisition of any lands for the purpose of establishing airports, landing fields or other aeronautical facilities; . . . and the exercise of any other powers herein granted to political subdivisions of this state, are hereby declared to be *public, governmental and municipal functions, exercised for a public purpose, and matters of public necessity*."[65] (Emphasis added)

Respondent argues that the Legislature's intent in enacting section 116(e) of the Michigan Aeronautics Code "was to authorize the use of eminent domain to acquire property, not exempt property from taxation."[66] While section 116 does provide for the acquisition of property by the exercise of the right of eminent domain, when read in its entirety, it is clear from the language in the subdivision cited that the Legislative authorization is broader than Respondent asserts. It provides that "an authority may take by grant, purchase, devise, or lease, or by exercise of the right of eminent domain or otherwise acquire and hold real and personal property."[67] Respondent further argues that section 109(b) of the Michigan Aeronautics Code "provides only that the acquisition of land for airport facilities is legislatively determined to be for a public function, purpose, and necessity."[68] When read in its entirety, that section provides that the authority may acquire and hold land "necessary either for the construction of any airport facilities or for the efficient operation or for the extension of any airport facilities. . . . " And that section further provides that "[t]he acquisition of any land by an authority for an airport or airport facilities in furtherance of the purposes of the authority, *and the exercise of any other powers of the*

[64] MCL 259.116(1)(e)
[65] MCL 259.132
[66] Respondent's November 19, 2007 brief, page 11
[67] MCL 259.116(e)
[68] Respondent's November 19, 2007 brief, page 11

authority, are hereby declared as a matter of legislative determination to be public, governmental and municipal functions, purposes and uses exercised for a public purpose, and matters of public necessity."[69] (Emphasis added) Respondent is correct in that the Michigan Aeronautics Code does not provide that the operation of the noise barrier is tax exempt. However, the Act does provide that the operation of a noise barrier is a use for a public purpose.

Respondent asserts, and it was not contested, that the subject properties are within the area designated for the Pinnacle Project. Respondent then concludes from this fact that, although the subject parcels are vacant, the fact that "some of the parcels on neighboring properties, also designated for the Pinnacle Project, are used for agricultural and residential purposes. . . demonstrates that the property at issue is no longer necessary to serve as a noise barrier."[70] The issue in this matter is the use to which the subject parcels are being put during the tax years at issue, not the uses to which neighboring parcels have been put. No evidence was offered or testimony taken as to the relevance of the nature of these neighboring parcels to this case nor any citation to law or precedent provided to convince the Tribunal that the use of a property not herein at issue imposes a presumption of use on the subject properties.

Respondent argues that the property "has been suited for development for other purposes for a significant period of time," [71] and concludes that this is an indication that it no longer must be used as a noise barrier. However, the statutory criteria for exemption is not what the land might otherwise have been used for or what it may be used for in the future. Neither does the statute

[69] MCL 259.116
[70] Respondent's June 15, 2006 brief, page 6
[71] Respondent's June 15, 2006 brief, page 15

provide a limit on how long property can be used for a public purpose. The statute bases exemption on the actual present use of the property as of the tax dates at issue. Further, Respondent did not provide support in its arguments or briefs for its statement that the "ultimate 'use' of the property tax"[72] determines whether the current use qualifies for exemption. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

Respondent argues that because the Noise Plan requires that when the property is no longer needed as a noise barrier it is required to be used for economic purposes, the subject parcels are being held for a future use and not being put to a present use. Respondent does not provide any testimony or evidence to support a finding that the properties are no longer needed as noise barrier properties or that the Noise Plan has expired or is no longer in effect. Nor does Respondent provide support for its interpretation of the statute that because there may be some future alternative use for the properties, there is no current use except the status of being held for that future use. All parties agree that the land in question for the tax years at issue is vacant, overgrown, and untended. The subject properties were used as a noise barrier, and there has been no use other than the use as a noise barrier, during the tax years at issue.

[72] Respondent's June 15, 2006 brief, page 16

The subject properties were exempt for the tax years prior to the tax years at issue. Petitioner has offered credible reliable evidence and testimony to support its contention that there has been no change in the use or character of the properties for the 2004 tax year. Respondent has not provided evidence of any change in the use or character of the properties that would support a change in their exempt status in tax year 2004.

The statutory language herein at issue is clear and unambiguous in its statement of the Legislature's intent that the use of property by an airport authority as a noise buffer or for noise abatement is a public purpose. Petitioner is an authority, the subject properties are used by Petitioner for noise abatement or as a noise barrier. The use in question is a public purpose, use for a public purpose is exempt under MCL 211.7m, and the subject properties are exempt under that provision.

The Tribunal bases its decision that the subject properties are exempt from taxation under MCL 211.7m, as property used for a public purpose. Notwithstanding that determination, the Tribunal acknowledges Respondent offered alternative theories in support of its position that the subject properties are not exempt.

Respondent argued first in its prehearing brief that Petitioner uses the subject property for economic development which precludes its eligibility for exemption under M 211.7m based on the Court of Appeals decision in *City of Mt. Pleasant v State Tax Commission*, 267 Mich App 1; 703 NW2d 227 (2005). Respondent argued subsequently that Petitioner has made no use of the subject property for economic development which precludes its eligibility for exemption

under the Supreme Court's decision in *City of Mt. Pleasant v State Tax Commission,* 477 Mich 50; 729 NW2d 833 (2007). Petitioner established that property "has been sitting in a vacant state now for well over a decade, it has never been used to generate one penny of income."[73] Based on the testimony and evidence provided, the Tribunal finds that no use for economic development purposes has been made of the subject properties. Therefore, analysis under the criteria of the *City of Mt. Pleasant* case is unnecessary.

Neither is the Tribunal convinced by Respondent's arguments based on its reliance on *Traverse City v East Bay Township*, 190 Mich 327; 157 NW 85 (1916). That case is based on statutory language that was removed from the Compiled Laws long before the tax years at issue. Further, the Court in that case held that the "lands not only are not used for any public purpose, but they are not used for any purpose." That holding is contrary to the Tribunal's finding in this matter that the subject properties are in use and that use is a use for a public purpose. Further, *Rural Agricultural School District No. 1, Grosse Pointe Township, Wayne County v Blondell*, 251 Mich 525; 232 NW 377 (1930), also cited by Respondent is based on language in a provision applicable specifically, and only, to school districts.

Respondent further cites to *Municipal Employees Retirement Systems of Michigan v Charter Township of Delta*, 266 Mich App 510; 702 NW2d 665 (2005), in support of its position. The Tribunal agrees with Respondent that the facts in that case are clearly distinguishable from the facts of this case. In that case, the Court focused on whether the land at issue could be sold or was required to be held specifically as part of an investment portfolio. The Court determined that

[73] Transcript, page 14, ll 22-24

this specific use, based on the facts of that case, was exempt. Again, as the Tribunal finds that the subject properties in this matter are in use and that use is a use for a public purpose, the holding in *Municipal Employees* is inapplicable to this matter.

The Tribunal has considered the file, affidavits, pleadings, admissions, and documentary evidence filed by the parties, MCR 2.116(G)(5), in the light most favorable to Respondent as the party opposing the motion. The Tribunal finds there is no genuine issue in respect to any material fact, and Petitioner is entitled to judgment as a matter of law.

Therefore, the Tribunal concludes that the subject properties, listed below, are exempt from taxation pursuant to MCL 211.7m for the 2004, 2005, 2006, and 2007 tax years, as follows:

Parcel Number	Year	TCV
80-131-01-0001-300	2004	Exempt
	2005	Exempt
	2006	Exempt
	2007	Exempt
80-131-01-0013-000[74]	2004	Exempt
80-132-99-0002-000	2004	Exempt
	2005	Exempt
80-132-99-0005-000	2004	Exempt
	2005	Exempt
	2006	Exempt
	2007	Exempt
80-132-99-0007-701	2004	Exempt
	2005	Exempt
	2006	Exempt
	2007	Exempt
80-132-99-0019-000	2004	Exempt
	2005	Exempt
	2006	Exempt
	2007	Exempt

[74] Parcel No. 80-131-01-0013-000 was consolidated with parcel no. 80-131-01-0001-300 for tax years after the 2004 tax year

80-135-99-0001-700[75]	2004	Exempt
	2005	Exempt
	2006	Exempt
	2007	Exempt
80-135-99-0016-000	2004	Exempt
	2005	Exempt
	2006	Exempt
	2007	Exempt
80-136-99-0001-002	2004	Exempt
	2005	Exempt
	2006	Exempt
	2007	Exempt
80-136-99-0003-000	2004	Exempt
	2005	Exempt
	2006	Exempt
	2007	Exempt

Tax years 2008, 2009, and 2010 have been severed for separate resolution.

JUDGMENT

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

IT IS ORDERED that the property's assessed and taxable values for the tax years at issue shall be as set forth in the *Conclusions of Law* section of this Final Opinion and Judgment.

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 shown in this Final Opinion and Judgment within 20 days of the entry of this Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year

[75] This parcel was referred to as Parcel No. 80-135-99-0009-700 in the parties' pleadings. Respondent has determined that there was a typographical error and that the correct parcel no. for this property is 80-135-99-0001-700.

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 as required by this Final Opinion and Judgment within 28 days of the 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 of 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 interest shall accrue (i) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (ii) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (iii) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (iv) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (v) after December 31, 2007, at the rate of 5.81% for calendar year 2008, (vi) after December 31, 2008, at the rate of 3.31% for calendar year 2009, and (vi) after December 31, 2009, at the rate of 1.23% for calendar year 2010.

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: June 29, 2010 By: Rachel Asbury