

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

Brooklyn Sportsman's Club,
Petitioner,

v

MTT Docket No. 0364281

Columbia Township,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING RESPONDENT'S MOTION FOR
SUMMARY DISPOSITION

I. INTRODUCTION

This appeal involves three parcels of property located in the Township of Columbia, Jackson County, Michigan. The parcels are identified as parcel nos. 38-000-20-19-476-001-00, 38-000-20-19-476-002-03 & 38-000-20-30-127-003-00, and commonly known as 475 Monroe Street. For the 2009 tax year, Respondent Township changed the classification of all three parcels from 701 (Exempt General) to 201 (Commercial), thereby increasing the property's cumulative taxable value from \$0 to \$151,232 (\$107,178 for parcel no. 38-000-20-19-476-001-00, \$35,130 for parcel no. 38-000-20-19-476-002-03, and \$8,924 for parcel no. 38-000-20-30-127-003-00). Petitioner appealed this action to the 2009 March Board of Review, but the Board affirmed both the classification change and the

taxable value set forth by Respondent for each individual parcel. Petitioner filed this appeal with the Tribunal on May 19, 2009, arguing, in essence, that the subject property is entitled to exemption from ad valorem property taxation under the charitable exemption set forth in MCL 211.7o. On August 29, 2011, the parties entered a Stipulation of Facts into the record, and Respondent subsequently filed a Motion for Summary Disposition on September 2, 2011. On October 11, 2011, Petitioner filed a Motion requesting the Tribunal to extend the time for the filing of its response to Respondent's Motion for Summary Disposition and the Tribunal granted the same on October 21, 2011. Petitioner subsequently filed a Motion for Summary Disposition and response to Respondent's Motion for Summary Disposition on October 28, 2011, to which Respondent filed a Response on November 17, 2011.

II. PETITIONER'S CONTENTIONS

Petitioner contends that all three parcels at issue in this appeal are entitled to exemption from ad valorem property taxation under the charitable exemption set forth in MCL 211.7o. More specifically, Petitioner contends that it is a 501(c)(3) non-profit organization that utilizes the subject property for "conservation, education, service, charitable and scientific purposes and for the purpose of promoting sportsmanship, environment and natural resources," and therefore is a "charitable institution" under MCL 211.7(o) pursuant to the criteria set forth by the

Michigan Supreme Court in *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006), and other relevant case law. Petitioner contends that as such, its request for exemption should be granted, and it should be granted summary disposition as a matter of law.

III. RESPONDENT’S CONTENTIONS

Respondent contends that the subject property is not entitled to exemption from ad valorem property taxation under the charitable exemption set forth in MCL 211.7o. More specifically, Respondent contends that Petitioner’s 501(c)(3) status is not dispositive under the provisions the Michigan General Property Tax Act, and further, that Petitioner does not meet the criteria set forth by the Michigan Supreme Court in *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006), and other relevant case law, and therefore it is not a “charitable institution” under MCL 211.7(o). Respondent contends that as such, Petitioner’s request for exemption should be denied, and Respondent should be granted summary disposition as a matter of law.

IV. FINDINGS OF FACT

As previously noted, the subject property consists of three individual, but contiguous, parcels that are classified as commercial and located in the Township of Columbia, Jackson County, Michigan. On August 29, 2011, the parties entered

into an agreement wherein they stipulated to the following facts pertaining to the subject property:

1. The Club is considered a 501(c)(3) organization by the Internal Revenue Service under the Internal Revenue Code.

2. The Club's Articles of Incorporation, as adopted in 1983, provided that the purpose of the Club was to promote sportsmanship, environment, and natural resources. The Articles of Incorporation, as amended in 1989, state that it is organized exclusively for charitable, education, and scientific purposes, including for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code. Said Articles further state that no part of the net earnings of the Club shall inure to the benefit of, or be distributable to, its members, trustees, officers, or other private persons, except for paying reasonable compensation for services rendered and to make payments and distributions in furtherance of the Club.

3. The Club's By-laws provide in the Preamble that its members "believe in the Principles of sportsmanship, preservation of land, fish, fowl, game and all forms of conservation, and know that when these principles are followed the community benefits as a whole, particularly the sportsman, the farmer and the lover of nature, and therefore, we have joined together in association for the purpose of preserving and fostering these principles."

* * *

7. For tax year 2009, the Township changed the classification of the Property from 701 (Exempt General) to 201 (Commercial).

8. Following the Club's appeal of the 2009 tax year assessments of the Property, the Board of Review affirmed the change in classification to 201 (Commercial) and the taxable value.

* * *

10. The Club advertises itself as "The Ultimate Shooting Experience" on its promotional materials.

11. The Club is situated on approximately 25 acres and features a rifle range, pistol range and a shotgun skeet range. It also has a clubhouse, an archery range, a pheasant pen, birdhouses, duck nesting boxes, and a river dock.

12. In 2009, shooting hours for the Club were 9 a.m. to 7 p.m. in the summer and 9 a.m. to 4 p.m. in the winter, and the Club was generally open seven days a week, usually from sunrise to sunset.

13. The entrance to the Property is marked with a large sign reading "Brooklyn Sportsman's Club Members and Guests Only." Another sign reads "Private Property."

14. To be a member of the Club, an individual must be at least 18 years old and subscribe to the aim and purpose of the Club and pay dues and the initiation fee.

15. Dues are \$55.00 per year. An initiation fee of \$25.00 is also charged for new members.

16. Life members pay a discounted rate of dues: i.e. \$10.00 annually. Per the Club's bylaws, life members' annual dues are "determined by the Board." As stated in the June 2008 Board minutes, life members are members of the Club that are 65 years old or older, and have been members for at least 20 years.

17. The pistol range and rifle range are only open to members and accompanied guests, not to the public at large.

18. The clubhouse is only available for rent by members who have been in good standing for 6 months at a cost of \$300.00. The clubhouse may not be rented by the general public.

19. The Club holds an annual holiday party and picnics, which are only for members and their children and grandchildren.

20. The Club sponsors a rabbit hunt on the Property that is limited to members.

21. The shotgun skeet (clay shooting range) is only open to the public two days a month. The cost for non-members for sporting clays is \$20.00 and for members is \$15.00.

22. The Club hosts the Brooklyn IDPA (International Defensive Pistol Association) matches monthly from April to October. The cost per match for non-members is \$20.00 and for Club members is \$15.00.

23. A Turkey Shoot is held annually and is open to the public. In 2009, the cost to participate in the shoot was \$2.00 per person.

24. A class, "Becoming an Outdoor Woman," sponsored by the Michigan DNR is held annually for participation fee set by the DNR. The Club does not charge for the use of its facility for this event.

25. The Club opens the Property for bi-annual hunter's safety courses and monthly concealed pistol license classes. The instructors of the classes, who are Club members, set fees for the classes. The club does not charge for the use of its facility for this event.

26. The Club raises approximately 200 pheasants per year, which are released on local area farms.

27. The Club annually offers a \$500.00 scholarship to a child or grandchild of a Club member who is a high school senior in the Columbia School District who wants to study wildlife and/or conservation.

28. In tax year 2009, the Club made the following grants or donations:

- a. Kuntson's Walleye Fund (\$200)
- b. Fraternal Order of Police (\$20)
- c. Grace Hanen Center (\$50)
- d. Friends of NRA (\$275)

V. APPLICABLE LAW

A. Motions for Summary Disposition under MCR 2.116(C)(10).

Under MCR 2.116(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. *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 such motions 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).

B. Charitable Institution Exemption under MCL 211.7o.

The General Property Tax Act provides that “all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation.” MCL 211.1. “In general, tax exemption statutes are to be strictly construed in favor of the taxing authority.” *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 664; 378 NW2d 737 (1985); *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 753-754; 298 NW2d 422 (1980). The petitioner must prove, by a preponderance of the evidence, that it is entitled to an exemption. *ProMed Healthcare v Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002).

MCL 211.7o creates a property tax exemption for charitable institutions. It states, in pertinent part, that “[r]eal or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which that nonprofit charitable institution was incorporated is exempt from the collection of taxes under this act.” Pursuant to this statutory language, there are three basic elements that must be satisfied in order to qualify for an exemption under MCL 211.7o:

1. The real property must be owned and occupied by the exemption claimant;
2. The exemption claimant must be a nonprofit charitable institution; and
3. The exemption exists only when the buildings and other property at issue are occupied by the claimant solely for the purposes for which the claimant was incorporated.

The meaning of “charitable institution” is not legislatively defined, and as such, has been developed in case law. In *Retirement Homes v Sylvan Township*, 416 Mich 340; 330 NW2d 682 (1982), the Michigan Supreme Court set forth the following definition of “Charity”:

a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works *or otherwise lessening the burdens of the government*. *Id.* at 348-349 (emphasis in original).

Accordingly, the proper focus in determining an individual organization’s eligibility for a charitable institution exemption is whether the organization’s “activities, taken as a whole, constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons.” *MUCC v Lansing Twp*, 423 Mich 661, 673; 378 NW2d 682 (1985). In *Wexford Medical Group v Cadillac*, 474 Mich 192; 713 NW2d 734 (2006), the Court held that this definition of charity:

...sufficiently encapsulates, without adding language to the statute, what a claimant must show to be granted a tax exemption as a charitable institution...In light of this definition, certain factors come into play when determining whether an institution is a “charitable institution under MCL 211.70 and MCL 211.7n. Among them are the following:

- (1) A “charitable institution” must be a nonprofit institution.
- (2) A “charitable institution” is one that is organized chiefly, if not solely, for charity.
- (3) A “charitable institution” does not offer its charity on a discriminatory basis by choosing who, among the group it purports to serve, deserves the services. Rather, a “charitable institution” serves any person who needs the particular type of charity being offered.
- (4) A “charitable institution” brings people’s minds or hearts under the influence of education or religion; relieves people’s bodies from disease, suffering, or constraint; assists people to establish themselves for life; erects or maintains public buildings or works; or otherwise lessens the burdens of government.
- (5) A “charitable institution” can charge for its services as long as the charges are not more than what is needed for its successful maintenance.
- (6) A “charitable institution” need not meet any monetary threshold of charity to merit the charitable institution exemption; rather, if the overall nature of the institution is charitable, it is a “charitable institution” regardless of how much money it devotes to charitable activities in a particular year. *Id.* at 214-215.

VI. CONCLUSIONS OF LAW

The Tribunal first notes that Petitioner failed to submit the requisite filing fee for its Motion for Summary Disposition, and as such, the same is not properly

pending before the Tribunal. Nonetheless, having reviewed said Motion and Respondent's response thereto, the Tribunal finds as follows:

There appears to be no dispute between the parties with respect to Petitioner's non-profit status, nor its ownership and/or occupancy of the subject property, and thus the issue that must be addressed is whether Petitioner is a "charitable institution" under MCL 211.7o. In this regard, it is first noted that Petitioner's status as a 501(c)(3) non-profit organization, while relevant, does not conclusively establish eligibility for the charitable institution exemption under the Michigan General Property Tax Act. In *American Concrete Institute v State Tax Commission*, 12 Mich App 595; 163 NW2d 508 (1968), the Michigan Court of Appeals held:

The institute's income tax status does not affect or predetermine the taxable status of its property under the Michigan general property tax law, as it contends. The institute's exemption from Michigan ad valorem tax is not determinable by its qualifications as an organization exempt from income tax under section 501(c)(3) of the internal revenue code of 1954, but by the much more strict provisions of the Michigan general property tax act, supra, sections 7 and 9. A reading of the language of these two provisions (Federal and State), clearly demonstrates the difference. The institute's services are principally for its members, which eventually will benefit the public, but are not the kind of services to the general public which are contemplated by the legislature enactment for tax exemption.

Petitioner cites several cases in support of its contention that it is in fact a charitable institution, including *Moorland v Ravenna Conservation Club, Inc*, 183

Mich App 451; 455 NW2d 331 (1990). Petitioner contends that the facts in the instant appeal are very similar to those present in *Moorland*. And while the 20-acre parcel at issue in *Moorland* did similarly hold a clubhouse, archery range, rifle range, nature trail and a stream, the petitioner in that case was also extensively engaged in both conservation and humanitarian activities:

At the time of the hearing, the RCC had 159 members who regularly volunteered their efforts, time and services towards the club's purposes. Among these activities are the annual raising of 500 to 1500 pheasants which are then released on public land, the annual planting of approximately five thousand brook trout in public streams, the public distribution of bird houses and bird feeders at no charge, participation in a bluebird restoration program, and water pollution control and cleanup. In fact, it was the polluted condition of Crockery Creek that led to the initial formation of the club by a group of citizens who got together and were able to clean up the creek and get a new sewer system installed.

The RCC is also involved with the Department of Natural Resources on a regular basis. They assist the DNR in connection with the breeding and raising of various fish and game and assist them in various other programs and projects. For instance, the RCC had recently worked with the DNR on both a turkey release program and a steelhead program to obtain finclips and scale samples. Testimony indicated that this latter program would have been eliminated without the cooperation and assistance of the RCC. The RCC also monitors the condition of Crockery Creek, using temperature graphs furnished by the DNR that run twenty-four hours a day. Additionally, the wildlife, fishery, and law enforcement divisions of the DNR often use the RCC's property in carrying out their duties. This too is at no charge.

The RCC's involvement also extends to area schools. Such involvement includes the sponsoring of a wildlife discovery program within the schools, the distribution of "Tracks" magazine within the

schools, and the use of club property by the schools for various types of outdoor education classes and programs. This is all provided at no cost to the schools. The RCC also pays for three youths to attend a MUCC youth camp each year and pays the expenses for allowing a teacher to attend environmental courses conducted by the DNR.

Materials concerning state licensing, hunting and fishing laws are also distributed by the RCC and educational films relating to hunting, fishing and land use regulation are shown on a monthly basis. These too are provided free of charge. Five club members are also certified instructors for hunter safety classes. These classes are required by the state in order to obtain a hunting license and are provided free of charge to interested members of the public. Approximately eighty-five students attend these classes each year. *Id.* at 454-457.

With these facts, the Court of Appeals found that “by either engaging in independent activities addressing [the conservation and promotion of natural resources and wildlife]...and or assisting the state agency charged with the same, the RCC has not only lessened an expressly recognized burden of government but has also conferred a laudable ‘gift’ on the community at the same time.” *Id.* at 461.

In the instant appeal, however, the Tribunal finds that while Petitioner does engage in some conservation and humanitarian efforts, such efforts are fairly minimal, and most certainly do not rise to the level noted in *Moorland*. Similarly, although Petitioner does open its property and facilities to the general public in a very limited capacity, the overwhelming majority of the evidence supports a conclusion that the subject property is generally not available for use by non-

members. As such, Petitioner's activities do not substantially reduce any governmental burdens, and the Tribunal finds that, when taken as a whole, the activities do not "constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons." *MUCC, supra* at 673. To the contrary, the facts set forth by the pleadings, affidavits and other documentary evidence filed in the above-captioned case are more akin to those of both *MUCC, supra* & *North Ottawa Rod & Gun Club, Inc v Grand Haven Charter Twp*, unpublished opinion per curiam of the Court of Appeals, decided August 21, 2007, (Docket No. 268308), wherein the petitioners were found to exist primarily to serve the interests of their members. *See, North Ottawa* at 2.

In light of the above, the Tribunal finds that Petitioner has failed to prove by a preponderance of the evidence that it qualifies for a property tax exemption under MCL 211.7o and further, that there is no genuine issue of material fact with regard to the same. As such, Respondent is entitled to judgment as a matter of law.

VII. JUDGMENT

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

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

IT IS FURTHER ORDERED that the case is DISMISSED.

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This Opinion resolves all pending claims and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: December 16, 2011 By: Kimbal R. Smith III
ejg