Hillsdale College,
Petitioner,

v

City of Hillsdale,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 20-000028

Presiding Judge
Steven M. Bieda

ORDER GRANTING SUMMARY DISPOSITION IN FAVOR OF RESPONDENT

FINAL OPINION AND JUDGMENT

The Tribunal issued an Order Denying Petitioner's Motion for Summary Disposition, Proposed Order Granting Summary Disposition in Favor of Respondent, Order Denying Petitioner's Motion for Costs, Order Denying Respondent's Request for Costs, and Proposed Opinion and Judgment (POJ) on August 11, 2020. 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 (ALJ) considered the testimony and evidence and made specific findings of fact and conclusions of law. The ALJ's determination is supported by the testimony and evidence and applicable statutory and case law.

Given the above, the Tribunal adopts the POJ as the Tribunal's final decision in this case.[1] The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the POJ in this Final Opinion and Judgment. As a result:

Parcel No. 30-006-222-476-35 is not entitled to an exemption, under MCL 211.7n, for the 2019 and 2020 tax years.

IT IS SO ORDERED.

IT IS ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) at issue shall correct or cause the assessment rolls to be corrected to reflect the property's exemption within 20 days of entry of this Final Opinion and Judgment,

[1] See MCL 205.726.

subject to the processes of equalization.[2] To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (xi) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (xii) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, and (xiii) after June 30 2020, through December 31, 2020, at the rate of 5.63%.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A motion for reconsideration must be filed with the Tribunal with the required filing fee within 21 days from the date of entry of the final decision.[3] 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

[2] See MCL 205.755.
[3] See TTR 261 and 257.

decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.[4] You are required to serve a copy of the motion on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.[5] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[6]

A claim of appeal must be filed with the Michigan Court of Appeals 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."[7] You are required to file a copy of the claim of appeal with filing fee with the Tribunal in order to certify the record on appeal.[8] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[9]

By _____

Entered: September 18, 2020
ssm

[4] See TTR 217 and 267.
[5] See TTR 261 and 225.
[6] See TTR 261 and 257.
[7] See MCL 205.753 and MCR 7.204.
[8] See TTR 213.
[9] See TTR 217 and 267.

Hillsdale College,
Petitioner,

v

City of Hillsdale,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 20-000028

Presiding Judge
Peter M. Kopke

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

PROPOSED ORDER GRANTING
SUMMARY DISPOSITION IN FAVOR OF RESPONDENT

ORDER DENYING PETITIONER'S MOTION FOR COSTS

ORDER DENYING RESPONDENT'S REQUEST FOR COSTS

PROPOSED OPINION AND JUDGMENT

INTRODUCTION

On June 11, 2020, Petitioner filed Motions requesting that the Tribunal enter summary judgment in its favor in the above-captioned case under MCR 2.116(C)(10) and award Petitioner costs. On June 30, 2020, Respondent filed a response to the Motions, which also requests costs.

The Tribunal has reviewed the Motions, the Response, and the case file and finds that the granting of Petitioner's Motion for Summary Disposition is warranted and that the denial of Petitioner's Motion for Costs and Respondent's Request for Costs is also warranted.

PETITIONER'S CONTENTIONS

In support of its Motions, Petitioner contends that the subject property is exempt from ad valorem taxation under MCL 211.7n, as the property is a parking lot used by Petitioner for student, staff, faculty, and visitor parking, as well as for parking and

storage of shuttle buses and maintenance vehicles owned by Petitioner. Petitioner also contends that it has possession, ownership, and control of the property.

RESPONDENT'S CONTENTIONS

In support of its Response, Respondent contends that the subject parking lot is used by both Petitioner and the tenants of a nearby privately-owned townhome complex for parking and, as such, the property is not "solely" used for the purposes for which Petitioner was incorporated, as required by MCL 211.7n. In that regard, Respondent contends that the property is subject to a 2018 easement agreement between Petitioner and the owner of a neighboring townhome complex granting the tenants the right to use or otherwise park in the parking lot.

STANDARD OF REVIEW

As for the Tribunal's review of the instant Motion for Summary Disposition, there are no specific Tribunal rules governing motions for summary disposition. Thus, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on the Motion.[1]

With respect to the Motion, Petitioner moves for summary disposition under MCR 2.116(C)(10) and such motions test the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.[2]

In resolving such motions, the Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party.[3] The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.[4] The burden then shifts to the opposing

[1] See TTR 215.
[2] See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).
[3] See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).
[4] See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

party to establish that a genuine issue of disputed facts exists.[5] Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving party may not rely on mere allegations or denials in pleadings but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists.[6] If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[7]

Summary disposition is also appropriate under MCR 2.116(I)(2) "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment as a matter of law."[8] Thus, under that court rule the Tribunal may render judgment in favor of Respondent.

CONCLUSIONS OF LAW

The Tribunal, having given careful consideration to the Motion for Summary Disposition and the Response under MCR 2.116(C)(10) and MCR 2.116(I)(2), finds that there are no genuine issues of material fact and that the granting of summary disposition in favor of Respondent is warranted for both the 2019 and 2020 tax years.[9] More specifically, MCL 211.7n is a tax exemption statute, and, as such, the Tribunal is required to "strictly construe" that statute "in favor of the taxing authority."[10] That does not, however, mean that the Tribunal "should give a strained construction which is adverse to the Legislature's intent."[11] In that regard, MCL 211.7n provides, in pertinent part:

> Real estate or personal property **owned and occupied** by nonprofit theater, library, educational, or scientific institutions incorporated under the laws of this state with the buildings and other property thereon **while**

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[5] *Id.*
[6] See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).
[7] See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).
[8] See also *Washburn v Michailoff*, 240 Mich App 669; 613 NW2d 405 (2000).
[9] See MCL 205.737(5)(a) (i.e., "the appeal for each subsequent year for which an assessment has been established shall be added automatically to the petition").
[10] See *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 664–65; 378 NW2d 737 (1985).
[11] See *Inter Co-op Council v Dep't of Treasury*, 257 Mich App 219, 223; 668 NW2d 181 (2003) citing *Cowen v Dep't of Treasury,* 204 Mich App 428, 431; 516 NW2d 511 (1994), which provides, in pertinent part, "[w]hile tax-exemption statutes are strictly construed in favor of the government, **they are to be interpreted according to ordinary rules of statutory construction**." [Emphasis added.]

> **occupied by them solely for the purposes for which the institutions were incorporated** is exempt from taxation under this act.
>
> [Emphasis added.]

Finally, the requested exemption is an established class of exemption and, as a result, Petitioner is required to establish the property's entitlement to that exemption by a preponderance of the evidence.[12]

Here, there is no dispute that Petitioner owns the land or that Petitioner is a nonprofit educational institution. Rather, the only dispute relates to Respondent contention that the exemption claim should be denied because the parcel was not occupied as of the relevant tax days (i.e., December 31, 2018 and December 31, 2019).[13] In that regard, the Supreme Court stated in *Liberty Hill Housing Corp v City of Livonia* that "we conclude that to occupy property under MCL 211.7o(1), the charitable institution must at a minimum have a regular physical presence on the property."[14] Although the decision in *Liberty Hill* relates to MCL 211.7o and not MCL 211.7n, the Tribunal finds that the holding in that case is applicable to the instant case.[15] Respondent also contends that the property, even if occupied, is not used by Petitioner "solely" for the purposes for which Petitioner was incorporated.[16]

In response to said contentions, Petitioner submitted an affidavit that provides, in pertinent part:

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[12] See *ProMed Healthcare v Kalamazoo*, 249 Mich App 490, 494-495; 644 NW2d 47 (2002).
[13] See MCL 211.2(2).
[14] See *Liberty Hill Housing Corp v City of Livonia*, 480 Mich 44, 58; 746 NW2d 282 (2008).
[15] See *Spartan Stores, Inc v City of Grand Rapids*, 307 Mich App 565, 569; 861 NW2d 347 (2014), which provides, in pertinent part:

> The primary goal of statutory interpretation "is to discern and give effect to the intent of the Legislature." *Lafarge Midwest, Inc v Detroit,* 290 Mich App 240, 246; 801 NW2d 629 (2010). "When ascertaining the Legislature's intent, a reviewing court should **focus first** on the **plain language** of the statute in question . . . ." *Fisher Sand & Gravel Co v Neal A Sweebe, Inc,* 494 Mich 543, 560; 837 NW2d 244 (2013) (citations omitted). **The contested portions of a statute** "**must be read in relation to the statute as a whole and work in mutual agreement**." *US Fidelity & Guarantee Co v Michigan Catastrophic Claims Ass'n (On Rehearing),* 484 Mich 1, 13; 795 NW2d 101 (2009). [Emphasis added.]

In that regard, see also the unpublished opinion *per curiam* issued by the Michigan Court of Appeals on August 13, 2019 (Docket No. 343662) at p 4-5.
[16] See *Liberty Hill Housing Corp v City of Livonia*, 480 Mich 44; 746 NW2d 282 (2008).

> Adjacent to the Subject Property is a small apartment building that Petitioner does not own, but that is **typically** occupied by upper class students who have chosen not to live in Petitioner's dormitories and residence halls. **Because the occupants of those apartments are Petitioner's students**, Petitioner **permits those students** to park at the Subject Property so that they can access the Campus.
>
> [Emphasis added.]

The characterization that Petitioner "permits" residents of the townhome complex to park at the property is, however, misleading, as it does not accurately describe or portray the August 30, 2018 Parking Easement Agreement between Petitioner and the owner of the townhome complex. More specifically, the Agreement gives the owner or, more appropriately, the owner's tenants "the right of vehicles and pedestrians to enter upon and exit such parcel." As for Petitioner's statement that the townhomes or "apartments" are "typically occupied by upper class students," the townhomes are available for rent by the general public and no evidence was submitted to indicate that the townhomes are occupied by students only. Additionally, the owner is a for-profit company. As such, Petitioner cannot state that the property is solely used for the purposes for which Petitioner was incorporated while a for-profit entity has a right to offer parking on the property in the due course of operating its for-profit business for the tax years at issue.

With respect to Petitioner's Motion for Costs and Respondent's Request for Costs, the Tribunal finds that an award of costs is, as also indicated above, not warranted. In that regard, the issue of costs is within the discretion of the Tribunal and said discretion is generally only exercised when a claim is frivolous or imposed for any improper purpose or a party has caused any undue delay or engaged in any behavior of a nature that would justify an award of costs.[17] Here, the parties' respective claims do

[17] See TTR 209(1) (i.e., "[t]he granting of costs and attorney fees are within the discretion of the Tribunal." That rule is, however, silent as to the standards that are to be applied in making such determinations and the Tribunal, in exercising such discretion, generally looks to whether a claim or defense was frivolous or imposed for any improper purpose. See also TTR 215, MCL 24.323, MCR 2.114, and *Aberdeen of Brighton, LLC v City of Brighton*, unpublished opinion *per curiam* issued by the Michigan Court of Appeals on October 16, 2012 (Docket No. 301826).

not appear to be frivolous or improperly imposed and neither party has caused any undue delay or engaged in any such behavior.

PROPOSED JUDGMENT

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

IT IS FURTHER ORDERED that summary disposition is GRANTED in favor of Respondent.

IT IS FURTHER ORDERED that the property is NOT EXEMPT from ad valorem taxation for the 2019 and 2020 tax years under MCL 211.7n.

IT IS FURTHER ORDERED that Petitioner's Motion for Costs is DENIED.

IT IS FURTHER ORDERED that Respondent's Request for Costs is DENIED.

EXCEPTIONS

This is a **proposed** decision ("POJ") prepared by the Michigan Administrative Hearings System and **not** a final decision.[18] As such, **no** action should be taken based on this decision, as the parties have 20 days from date of entry of this POJ to **notify** the Tribunal **in writing if 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 and any matter addressed in the POJ. There is no fee for filing exceptions and the opposing party has 14 days from the date the exceptions were mailed to that party to file a written response to the exceptions.[19]

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.

After the expiration of the time period for the opposing party to file a response to the exceptions, the Tribunal will review the case file, including the POJ and all exceptions and responses, if any, and:

1. Issue a Final Opinion and Judgment (FOJ) adopting the POJ as the final decision.

[18] See MCL 205.726.
[19] See MCL 205.762(2) and TTR 289(1) and (2).

2. Issue an FOJ modifying the POJ and adopting the Modified POJ as the final decision.
3. Issue an Order vacating the POJ and ordering such other action as is necessary and appropriate.

Entered: August 11, 2020 By 

PMK/bw