Hillsdale College,
Petitioner,

v

City of Hillsdale,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 20-000023

Presiding Judge
Steven M. Bieda

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Order Granting Petitioner's Motion for Summary Disposition, Order Denying Petitioner's Motion for Costs, Order Denying Respondent's Request for Costs, and Proposed Opinion and Judgment (POJ) on August 10, 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. 30-006-126-129-01 shall be granted 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,

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City of Hillsdale,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 20-000023

Presiding Judge
Peter M. Kopke

PROPOSED ORDER GRANTING
PETITIONER'S MOTION FOR SUMMARY DISPOSITION

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 was part of Petitioner's campus grounds and contained a partial paved driveway with a gate. Petitioner also contends that the property is adjacent to several campus areas, helps to fill the natural landscape of the campus with grass, trees, dirt walkways, and provides natural areas

for students to study and socialize and additional vehicle access to portions of the campus for service vehicles.

RESPONDENT'S CONTENTIONS

In support of its Response, Respondent contends that Petitioner does not maintain a regular physical presence upon this parcel and, as such, does not occupy it as required by MCL 211.7n. Respondent also contends that the property is vacant and wooded, does not border any of Respondent's athletic facilities, and is only contiguous to a parking lot for Petitioner's Hillsdale Academy academic building. Respondent further contends the gate only serves to keep the public from driving onto the parcel.

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 party to establish that a genuine issue of disputed facts exists.[5] Where the burden of

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[1] See TTR 215.
[2] See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). See also *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (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).
[5] *Id.*

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]

CONCLUSIONS OF LAW

The Tribunal, having given careful consideration to the Motion for Summary Disposition and the Response under MCR 2.116(C)(10), finds that there are no genuine issues of material fact and that the granting the summary disposition in favor of Petitioner is warranted for both the 2019 and 2020 tax years.[8] 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."[9] That does not, however, mean that the Tribunal "should give a strained construction which is adverse to the Legislature's intent."[10] 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 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.[11]

Here, there is no dispute that Petitioner owns the property or that Petitioner is a nonprofit educational institution. Rather, the only dispute relates to Respondent's

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[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 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").
[9] See *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 664–65; 378 NW2d 737 (1985).
[10] 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 also 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.]
[11] See *ProMed Healthcare v Kalamazoo*, 249 Mich App 490, 494-495; 644 NW2d 47 (2002).

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).[12] More specifically, Respondent contends that Petitioner failed to maintain a regular physical presence at the property. 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."[13] 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.[14]

As for Petitioner's "regular physical presence on the property," Petitioner contends:

1. Its occupancy of this land is consistent with its purpose as a college.
2. The property is part of the college campus grounds.
3. The property is, among other things, a communal nature area for outdoor studying and socializing.
4. The area, by being a pleasant and relaxing communal atmosphere, enhances Petitioner's learning environment, offers privacy, and blends a natural landscape into the campus and surrounding neighborhood.
5. Students, faculty, staff, and visitors access the property and use it to traverse the campus.
6. It is adjacent to Petitioner's athletic facilities, including the football stadium and running track, a parking lot, and Petitioner's Hillsdale Academy academic facility and provides additional vehicle access to those areas.
7. It contains a partial paved driveway, a gate, and a dirt walkway leading to the aforementioned athletic and academic facilities.

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[12] See MCL 211.2(2).
[13] See *Liberty Hill Housing Corp v City of Livonia*, 480 Mich 44, 58; 746 NW2d 282 (2008).
[14] 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.

In response to said contentions, Respondent contends that the land is not part of Petitioner's physical campus, is not adjacent to Petitioner's athletic facilities or the Hillsdale Academy, and does not provide access to students or staff as required by MCL 211.7n. Respondent also contends that its assessor has not observed any regular physical presence at the property, which is small and undeveloped and that recent photographs of the property confirm such a finding.

Contrary to Respondent's contentions, the Tribunal finds that the pleadings and evidence submitted are, even in a light most favorable to Respondent, sufficient to demonstrate that Petitioner's students, faculty, and staff maintain a regular physical presence at the property. Although the maps submitted with Respondent's response do demonstrate that the subject property is not adjacent to Petitioner's athletic facilities, Respondent's contention that the property is not adjacent to Hillsdale Academy is a misrepresentation of the evidence. More specifically, the property and the Academy are, even though separated by the Academy's parking lot, contiguous or, at the very least, effectively contiguous. In that regard, Respondent has admitted that the Academy and the grounds surrounding the campus are exempt, which further supports a finding that the property is exempt as it is also part of the grounds surrounding the campus. The Tribunal further finds that the maintenance of grounds surrounding the campus, including the property at issue, is in line with Petitioner's stated educational mission, as the replacement of the property's trees with a privately owned residential development would inexorably alter the nature and character of this portion of Petitioner's campus.

With respect to the assessor's contention that there is no "dedicated" walkway upon this parcel, the evidence rebuts this allegation, as the photographs submitted by Respondent clearly show the gate and vehicle path and demonstrate that the ground is clearly worn on the land side of the sidewalk indicating a linear path traversing the property, which is further supported by the photographs submitted by both parties as those photographs show the continuation of the path as the ground of the interior of the property is also well-worn, without overgrowth or felled branches and there are substantial footfalls in the snow following the path observed in Respondent's photos.

Although Respondent may not deem this path as a "dedicated" walkway, the signs of the path are plainly obvious. The next necessary question is who is creating this well-worn ground and substantial footfalls. In that regard, the path extends from a residential neighborhood to the parking lot adjacent to a large academic building and the evidence leads to the plain conclusion that this path is used by Petitioner's students, faculty, or staff to access or otherwise traverse Petitioner's campus.

As for Respondent's other contentions, the size of the subject parcel is not a dispositive issue, and the lack of land improvements beyond the gate, while favoring Respondent's argument, is outweighed by other evidence on the record. Additionally, the assessor's contention that she has not personally observed anyone using the property, even though uncontested, is also outweighed, as her observations are likely rare or, at best, periodic in nature.

Given the above, the Tribunal finds that Petitioner has met its burden of proof with respect to its Motion, as the undisputed facts presented lead to the inevitable conclusion that there are no genuine issues of material facts in dispute and that Petitioner is entitled to summary disposition as a matter of law.

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.[15] Here, the parties' respective claims do 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 GRANTED.

[15] 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 Court of Appeals on October 16, 2012 (Docket No. 301826).

IT IS FURTHER ORDERED that the property is 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.[16] 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.[17]

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.
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 10, 2020 By Peter M. Koglar

PMK/bw

[16] See MCL 205.726.
[17] See MCL 205.762(2) and TTR 289(1) and (2).