

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

Battle Creek Unlimited, Inc.,
Petitioner,

v

MTT Docket No. 401004

City of Battle Creek,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

ORDER GRANTING RESPONDENT'S MOTION FOR CONSOLIDATION

ORDER GRANTING RESPONDENT'S MOTION FOR
SUMMARY DISPOSITION

I. INTRODUCTION

Petitioner, Battle Creek Unlimited, Inc., is appealing the subject property's taxable value for the 2010 tax year. On December 16, 2011, Respondent filed a Motion requesting that the Tribunal consolidate the above-captioned case with MTT Docket Nos. 401005, 401006, 401007, 401008, 401009, 401010, 401011, 401012, 401014, 401015, 401016, 401017, 401019 and 401020 pursuant to TTR 220. Also on December 16, 2011, Respondent filed a Motion for Summary Disposition. In this Motion, which was filed pursuant to TTR 230 and MCR 2.116(C)(10), Respondent requests the Tribunal to enter judgment in its favor as a matter of law and dismiss all of the aforementioned docket numbers accordingly. The Tribunal, having given careful consideration to Respondent's Motions and

Petitioner's responses thereto under TTR 220 and 230, and the criteria for MCR 2.116(C)(10), and based on the pleadings, affidavits and other documentary evidence provided, finds that granting the Motions is appropriate.

II. PETITIONER'S CONTENTIONS

Petitioner contends that all parcels at issue in this appeal ¹ are entitled to exemption from ad valorem property taxation. Petitioner does not identify the statutory basis for its claim of exemption, but rather simply contends that it is "a tax exempt entity, using and occupying the property for purposes consistent with its tax exempt status." It appears to the Tribunal that the basis of Petitioner's argument lies in the charitable institution exemption set forth in MCL 211.7(o), and that in essence, Petitioner is asserting that it is a "charitable institution" 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, and further, that it "occupies" the subject parcels "solely for the purposes for which [it] was incorporated." Petitioner contends that, as such, it is entitled to the requested exemption and Respondent's request for summary disposition should be denied.

¹ As consolidated with MTT Docket Nos. 401005, 401006, 401007, 401008, 401009, 401010, 401011, 401012, 401014, 401015, 401016, 401017, 401019 and 401020.

III. RESPONDENT'S CONTENTIONS

Respondent contends that none of the parcels at issue in this appeal² are entitled to exemption from ad valorem property taxation under the charitable exemption set forth in MCL 211.7o. More specifically, Respondent contends that regardless of whether Petitioner meets 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 does not “occupy” the subject parcels “solely for the purposes for which [it] was incorporated.” Respondent contends that, as such, Petitioner is not entitled to the requested exemption, and Respondent should be granted summary disposition as a matter of law.

IV. FINDINGS OF FACT

Petitioner, a non-profit 501(c)(3) corporation, filed its Petition in the above-captioned case on June 1, 2010, protesting the taxable value of parcel no. 3020-01-004-0, as determined by Respondent for the 2010 tax year. Petitioner owns multiple non-contiguous properties within Respondent's jurisdiction, and fourteen similar, but separate tax appeals were filed with the Tribunal on June 1, 2010. The issue in each of these appeals, which are identified as MTT Docket Nos. 401005, 401006, 401007, 401008, 401009, 401010, 401011, 401012, 401014, 401015,

² As consolidated with MTT Docket Nos. 401005, 401006, 401007, 401008, 401009, 401010, 401011, 401012, 401014, 401015, 401016, 401017, 401019 and 401020.

401016, 401017, 401019 and 401020, is the same as that presented in the above-captioned case: whether the individual parcels are exempt from ad valorem taxation under MCL 211.7o, or any other relevant statute.

According to its Amended ³ Articles of Incorporation, the purpose or purposes for which the corporation is organized are:

- (a) To create, expand, and retain jobs in the City of Battle Creek by: attracting enterprises to Battle Creek; encouraging local companies to expand; and creating an environment where business and industry can succeed;
- (b) To coordinate and perform activities with other community groups designed to enhance a superior quality of life and business environment in the Battle Creek and Calhoun County Areas;
- (c) To encourage regular workforce needs assessments, and to foster a network of employment and training entities able to meet identified current and future employment requirements;
- (d) To generate employment opportunities for economically disadvantaged residents of the Battle Creek area, and to support and encourage training programs for unemployed/underemployed individuals that produce graduates with the skills to obtain good, long-term employment opportunities.
- (e) To market land in Fort Custer Industrial Park and other developable land for the City of Battle Creek.
- (f) To maintain existing industrial jobs and encourage existing industries and other economic enterprises to expand and create new jobs; to generate employment opportunities for economically disadvantaged residences of the City of Battle Creek and the surrounding area; to support and encourage training programs for unemployed/underemployed individuals that produce graduates with skills to obtain good, long-term jobs.

³ Effective August 26, 2010

- (g) To perform services to the community of Battle Creek and Calhoun County.
- (h) To receive funds from the City of Battle Creek and governmental units in Calhoun County and from philanthropy and the general public for said purposes.
- (i) To overcome economic blight and deterioration in the City of Battle Creek and Calhoun County.
- (j) To relieve the burden of government through the advisory function and to actively foster efforts in economic development, business development, job creation, job retention, and income growth.
- (k) To carry out charitable purposes improving the quality of life in the greater Battle Creek and Calhoun County areas.
- (l) To own real and personal property for charitable and economic development purposes consistent with the arresting of blight and combating urban deterioration.
- (m) In general, to carry on any business in connection therewith and incident thereto not forbidden by the laws of the State of Michigan and with all the powers conferred upon corporations by the laws of the State of Michigan.

In response to Respondent's First Set of Interrogatories and Requests for Production of Documents, and more specifically, in response to an interrogatory that focused on occupancy, Petitioner indicated that "[t]here have not been any individuals occupying any part of the subject property during the relevant period. The property was acquired when vacant and has been held for possible economic development, consistent with Petitioner's above described purposes and its role with Respondent."

V. APPLICABLE LAW

A. Consolidation of Proceedings.

TTR 220 states, in pertinent part, as follows:

- (3) If proceedings involving a substantial and controlling common question of law or fact are pending before the tribunal, then the tribunal may do any or all of the following:
 - (a) Order a joint hearing on any or all matters in issue.
 - (b) Order a joinder of all parties in accordance with their interests.
 - (c) Order the proceedings consolidated.
 - (d) Make other orders concerning the proceedings as may tend to avoid unnecessary costs, or delay.
- (4) Parties may be added or dropped by order of the tribunal on its own initiative or on motion of any interested person at any stage of the proceedings and according to terms that are just.

B. 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).

C. 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.

In *Liberty Hill Housing v City of Livonia*, 480 Mich 44; 746 NW2d 282

(2008), the Michigan Supreme Court addressed the issue of what constitutes

occupancy under MCL 211.7o. After a thorough analysis and review of prior case law, the High Court rejected the argument that “occupation” should be interpreted to mean “charitable use,” and determined that the legislature intended a meaning more in line with the dictionary definition “to be a resident or tenant of; dwell in.” Consequently, the Court held that MCL 211.7o requires, at a minimum, “a regular physical presence on the property.” *Id.* at 56-58. In furtherance of this holding, the Court noted the importance of the distinction between the requirements of the first and third statutory elements of MCL 211.7o⁴, and reasoned that in as much as the former “uses the conjunctive term ‘owned and occupied’ ...the Legislature must have intended different meanings....Otherwise, the word ‘occupied’ would be mere surplusage.” *Id.* at 57. Ultimately, the Court concluded that all other potential definitions were essentially “synonymous with ownership” or simply did not “make sense in the context of the statute,” and therefore could not possibly represent the intended meaning.

VI. CONCLUSIONS OF LAW

Prior to addressing the substantive issue of exemption eligibility and the appropriateness, or lack thereof, of granting Respondent’s Motion for Summary

⁴ As noted above, the three basic elements of MCL 211.7o require that (1) the property 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 [charitable] purposes* for which the claimant was incorporated.

Disposition under the criteria for MCR 2.116(C)(10), the Tribunal first finds that the above-captioned case and MTT Docket Nos. 401005, 401006, 401007, 401008, 401009, 401010, 401011, 401012, 401014, 401015, 401016, 401017, 401019 and 401020 present common questions of fact and law, and consolidation of the same will facilitate the efficient administration of justice. As such, Respondent has shown good cause to justify the granting of its Motion to Consolidate, pursuant to TTR 220.

In regards to the Summary Disposition issue, it is clear that the main point of contention between the parties relates to whether or not Petitioner “occupies” the subject property within the meaning of MCL 211.7o. Nonetheless, the Tribunal must first note that the record does not support a determination that Petitioner is a qualifying “charitable institution” under the statute. In this regard, 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.

Aside from generalized statements and assertions relating to the organization, its purpose, and the activities in which it engages to further its purpose, no documentary evidence has been submitted to support a finding that Petitioner is in fact a "charitable institution" 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.

Further, the Tribunal finds that, like the petitioner in *Liberty Hill, supra*, Petitioner is, in essence, attempting to equate the term "occupy" with the term "use," an argument that was explicitly rejected by the Supreme Court not more than four years ago. More specifically, Petitioner argues that "[i]t owns and holds...properties striving to bring about economic development and better use for the buildings or the vacant lots, hoping to bring about renovation, more property tax receipts, more employment, and more income tax receipts." The Tribunal finds absolutely no merit in Petitioner's argument that the Court's holding in *Liberty Hill* somehow revolved around the fact that "someone other than the exemption seeking property tax payer occupied the property under rental agreements." Moreover,

even in situations where exemption eligibility does center on the claimant's "use" of the property,⁵ Michigan courts have consistently held that holding land for pure speculation, or even for some future intended use is not sufficient. Rather, there must be a current use of the property, or at the very least, active preparation for future economic development purposes. See *Traverse City v East Bay Twp*, 190 Mich 327; 157 NW 85 (1916); *Rural Agricultural School Dist v Blondell*, 251 Mich 525; 232 NW 377 (1930), and *City of Mt Pleasant v State Tax Commission*, 477 Mich 50; 729 NW2d 833 (2007).

The Tribunal is satisfied that Respondent has met its initial burden of supporting its Motion for Summary Disposition and, in light of the above, finds that Petitioner has failed to present documentary evidence sufficient to establish the existence of a genuine issue of material fact on its eligibility for a property tax exemption under MCL 211.7o or any other statutory authority. As such, Respondent is entitled to judgment as a matter of law and its Motion is properly granted.

VII. JUDGMENT

IT IS ORDERED that Respondent's Motion to Consolidate is GRANTED.

IT IS FURTHER ORDERED that all future pleadings and documents filed in these cases shall refer to MTT Docket No. 401004.

⁵ MCL 211.7m, though not applicable in the instant appeal, provides, in pertinent part, as follows: Property owned by...a county, township, city, village, or school district *used* for public purposes...is exempt from taxation under this act.

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

IT IS FURTHER ORDERED that the case is DISMISSED.

This Opinion resolves all pending claims and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: February 2, 2012 By: Kimbal R. Smith III

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