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

K Stiner Enterprises, LLC,
Petitioner,

v

MTT Docket Nos. 15-007015 & 15-007020

City of Traverse City,
Respondent.

Tribunal Judge Presiding
Valerie Lafferty

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Opinion and Judgment ("POJ") on July 10, 2017. 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 Nos. 28-51-898-036-10 & 28-51-898-649-00 shall be granted an exemption under MCL 211.181(2)(b) for the 2014-2017 tax years; the amount of the exemption is 100%.

The property's TV, as established by the Board of Review for the tax years at issue, is:

Parcel Number: 28-51-898-036-10

Year	TV
2014	$63,804
2015	$64,824
2016	$65,018
2017	$65,603

Parcel Number: 28-51-898-649-00

Year	TV

[1] See MCL 205.726.

2014	$123,790
2015	$125,770
2016	$126,147
2017	$127,282

The property's final TV, as determined by the Tribunal for the tax years at issue, is:

Parcel Number: 28-51-898-036-10

Year	TV
2014	$0
2015	$0
2016	$0
2017	$0

Parcel Number: 28-51-898-649-00

Year	TV
2014	$0
2015	$0
2016	$0
2017	$0

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, 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

2 See MCL 205.755.

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%, and (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%.

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 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 decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.[4] A copy of the motion must be served 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 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] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of 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 Valerie Lafferty

Entered: August 14, 2017
ejg

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[3] See TTR 261 and 257.
[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.

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

K. Stiner Enterprises, LLC,[1]
Petitioner,

v

MTT Docket No. 15-007015 & 15-007020

City of Traverse City,
Respondent.

Administrative Law Judge Presiding
Peter M. Kopke

PROPOSED OPINION AND JUDGMENT

PROPOSED ORDER DENYING PETITIONER'S REQUEST FOR COSTS

INTRODUCTION

Petitioner appealed the denial of its request by Respondent's 2015 December Board of Review for an exemption from ad valorem property taxes under MCL 211.7m or MCL 211.181(2)(b) for Parcel Nos. 28-51-898-036-10 and 28-51-898-649-00 for the 2014 and 2015 tax years. Although no motions to amend the petition to add subsequent tax years were filed, the properties' assessments for the 2016 and 2017 tax years are "added automatically to the petition" once the assessment for the subsequent tax year is established and the assessments for those tax years have been established.[2] Rex O. Graff, Jr., Attorney, represented Petitioner and Richard J. Figura and Timothy Figura, Attorneys, represented Respondent.

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[1] The original petitions identified Cherry Capital Aviation, Inc. and Kent P. Stiner, as petitioners. Those petitions were, however, defaulted and amended petitions were filed naming Cherry Capital Aviation, Inc. only. Petitioner's prehearing statement did, however, indicate that "[the correct] and full names of Petitioners are Cherry Capital Aviation, Inc. and K. Stiner Enterprises LLC (common ownership)" and that the lease was transferred from Cherry Capital Aviation, Inc. to K. Stiner Enterprises, LLC in 2014. As such, K. Stiner Enterprises, LLC was responsible for the taxes at issue and not Cherry Capital Aviation, Inc. More specifically, neither Cherry Capital Aviation, Inc. nor Mr. Stiner were parties-in-interest, as they did not have a "property interest" in the property at issue at the time the original and amended petitions were filed. See MCL 205.735a(6) (i.e., "the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, or determination") and *Spartan Stores, Inc v City of Grand Rapids*, 307 Mich App 565, 575-6; 861 NW2d 347 (2014). See also MCL 450.4504(2) (i.e., "[a] member has no interest in specific limited liability company property"). Rather, K. Stiner Enterprises, LLC was, as indicated in the March 8, 2017 Prehearing Conference Summary, the actual party-in-interest. Nevertheless, Cherry Capital Aviation filed a Motion on March 9, 2017, requesting that the Tribunal permit it to amend the petition to substitute K. Stiner Enterprises, LLC for Cherry Capital Aviation Inc. and Kent P. Stiner as petitioner in this case and the Tribunal entered an Order on March 17, 2017, granting the Motion.

[2] See MCL 205.737(5)(a). In that regard, Petitioner did not sell the property at issue until after the tax date at issue for the 2017 tax year (i.e., December 31, 2016). See MCL 211.2(2). See also Transcript ("TR.") 10-11.

A hearing on this matter was held on May 3, 2017. Petitioner's witness was Kent P. Stiner. Respondent did not call any witnesses.

As established by Respondent's March Board, the true cash value ("TCV"), assessed value ("AV"), and taxable value ("TV") of the subject properties for the tax years at issue are as follows:

Parcel Number: 28-51-898-036-10

Year	TCV	AV	TV
2014	$129,600	$64,800	$63,804
2015	$168,200	$84,100	$64,824
2016	$196,400	$98,200	$65,018
2017	$325,200	$162,600	$65,603

Parcel Number: 28-51-898-649-00

Year	TCV	AV	TV
2014	$270,600	$135,300	$123,790
2015	$262,800	$131,400	$125,770
2016	$281,600	$140,800	$126,147
2017	$662,400	$331,200	$127,282

Based on the evidence, the case file and applicable law, the Tribunal finds that the properties are exempt from ad valorem taxation under MCL 211.181(2)(b) for the tax years at issue as they are operated as a concession at a public airport and, as such, the properties' TCV, state equalized value ("SEV"), and TV for those tax years are also as follows:

Parcel Number: 28-51-898-036-10

Year	TCV	SEV	TV
2014	$129,600	$64,800	$0.00
2015	$168,200	$84,100	$0.00
2016	$196,400	$98,200	$0.00
2017	$325,200	$162,600	$0.00

Parcel Number: 28-51-898-649-00

Year	TCV	SEV	TV
2014	$270,600	$135,300	$0.00
2015	$262,800	$131,400	$0.00
2016	$281,600	$140,800	$0.00
2017	$662,400	$331,200	$0.00

PETITIONER'S CONTENTIONS

Petitioner contends that the evidence presented in this case supports a determination that the subject properties are exempt from ad valorem taxation under either MCL 211.7m or

211.181(2)(b). Specifically, Petitioner contends[3] that (i) the subject land[4] is "owned" by the Northwest Regional Airport Commission ('NRAC') and is exempt from taxation under MCL 211.7m, (ii) Petitioner is the "Lessee" of the subject properties and and those properties are used as a "concession" at a public airport that are "available for use by the general public" and, as a result, the properties are exempt from taxation under MCL 211.181(2)(b) "for the years 2014 and 2015 as presently at issue, as well as the subsequent year 2016, pursuant to MCL 205.737(5)(a)," (iii) the 2014 lease between the NRAC and Petitioner (Exhibit P8) "sets forth the purposes for which the Tenant may use the premises:

> Carrying on an aircraft maintenance business, including aircraft sales, aircraft charter, aircraft rental, flight instruction, and other general aviation activities as may be approved in writing by the Lessor, all of which are subject to certain rights, licenses, privileges, together with any other purpose related to aviation which is otherwise approved in writing by the Lessor . . . . The aviation business as operated pursuant to this Lease shall meet all requirements contained in 'Minimum Standards for Aeronautical Activities for Cherry Capital Airport' as contained in Ordinance Policy 12-1 . . . . At the commencement of the term of this Lease, Lessee shall provide Lessor with written notice of all activities authorized as referenced herein which Lessee conducts upon the leasehold premises."

(iv) the 1991 Modification and Amendment of the Lease between Respondent and the NRAC provides that the NRAC is "expected" to "[c]arry on operations of the airport in the best interest of the public and the air transportation needs of the area served by the airport as may be required" and that the NRAC "shall be responsible for all maintenance of the facilities that shall be required to meet daily operations of the airport," (v) Petitioner, as lessee, "answers to the City of Traverse City, NRAC, Federal Aviation Administration, and the Transportation Security Administration . . . . [and] the testimony of Kent Stiner indicated that NRAC, FAA, and TSA did not provide mere 'lip service' to the extensive list of compliance requirements that his business had to follow (such as references to gate security, code changes, storage of personal items, policing airport premises, badges, emergency response, building exterior and interior

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[3] Although Petitioner made an opening statement (see TR. 4-6), Respondent requested the opportunity for the parties to submit post-hearing briefs and said request was granted (see TR. 78-9). In that regard, Petitioner submitted a post-hearing brief on May 15, 2017, and a response brief on May 26, 2017. The post-hearing and response briefs summarize the facts purportedly established by the testimony provided and exhibits admitted and Petitioner's legal arguments in support of its contention. See also Petitioner's December 24, 2015 and January 9, 2016 petitions and the March 8, 2017 Prehearing Summary.

[4] The land underlying the hangars is not at issue. More specifically, the properties at issue are the hangars only.

maintenance, lawn care, sprinkler system and mowing, cleaning, heating, lighting, signage, employee demeanor),"[5] (vi) the 2014 Lease (Exhibit P8) allows Petitioner to "sub-lease portions of the leasehold premises to related and controlled entity sub-Tenants" and requires Petitioner to "provide NRAC with a copy of all sub-Leases" and Mr. Stiner "testified that he complied with those provisions and had leases with Evans Avionics, Space for Us, Cherry Capital Flight, [Up North] Flight, Cherry Capital Aviation, and Cherry Capital Fuel,"[6] (vii) Mr. Stiner also testified as "to Space for Us, Cherry Capital Flight, [Up North] Flight, and Cherry Capital Fuel . . . [he] was individually the sole owner of those entities or a Partner in those entities . . . . [and] [e]ach of those entities provided the same form of goods and services described in the 'purposes' in the . . . Lease," (viii) "Evans Avionics occupied the same premises and shared common areas with . . . [Petitioner] . . . . [and] provided services for the general public needing work on aircraft radios," (ix) Respondent's only "attack" related to Petitioner's "hours of operation" as governed by the "Minimum Standards" (Exhibit P10) and the Minimum Standards "provided:

> Hours of Operation. [Operator] shall have its premises open and services available during regular, posted business hours. The Operator shall make provisions for someone to be in attendance in the building at all times during posted operating hours. [Operators] who do not post regular hours shall provide for an adequate means of contacting the Operator to arrange an appointment ([e].g., cellular phone, answering service, [voice mail], pager, etc.) and agree to contact the potential customer no more than 24 hours after the initial service inquiry."

(x) Mr. Stiner "indicated that his business did maintain regular business hours, that those hours of operation where submitted to NRAC and have been continuously accepted and approved by NRAC (Transcript Pages 61, 71-72) . . . . [and] that for certain facets of his business, he was 'on-call' 24/7" (i.e., "Emergency Response Team"), (xi) "[f]or aircraft services . . . [Mr. Stiner] answered the hypothetical question '[w]hat would happen if the American Airlines incoming flight from Chicago or Detroit that arrived at 11:30 p.m. had a service/maintenance need' . . . . [by indicating that] American Airlines would call his business and then receive instruction for American Airlines to call Kent Stiner's cell phone and that he, or a similarly qualified service technician, had to be available to meet those needs 24/7 (Transcript Page 73)," (xi) Petitioner

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[5] Petitioner also indicated that "[e]very six months to a year basis, the Tenant has to report to NRAC its services, building space, types of aircraft, number of employees, and proposed hours of operation." See TR. 41.
[6] Petitioner also indicated that "[e]ach of these sub-Leases were . . . approved by NRAC."

"provided aircraft maintenance to the broadest spectrum of the general public which included American Airlines, United Airlines, Delta, Go Jet, Net Jet and various commercial airlines, as well as individual aircraft owners (Transcript Page 16)," (xii) "[t]he case . . . [that] factually is in closest parallel to the facts at bar is *Air Flite and Serv-A-Plane v Tittabawassee Township*[7] . . . . [a]lthough it is recognized in *Skybolt Partnership v City of Flint*[8] . . . that the underlying statutes have been amended subsequent to the *Air Flite* decision, the 'bundle of sticks' concept [applied in *Air Flite*] continues to be the approach taken by the . . . Tribunal and Appellate Courts in evaluating the degree of autonomy retained by the Tenant/Concessionaire," (xiii) "[i]t is acknowledged that . . . [Petitioner] technically ha[s] rights to remove the buildings from the premises at the termination of the Lease, although Mr. Stiner indicated realistically such a decision to remove a brick building was not feasible (Transcript Page 24)," (xiv) "[t]he 20 year Lease preserved the right to the Landlord to terminate the Lease at any time . . . . [and] [a]s protection to the Tenant, the Lease provided that early termination would require NRAC to pay the Tenant the 'market value . . . as further adjusted by an anticipated term of years equal to the then determined useful life of the improvements, or a term of 20 years, whichever is less,"[9] (xv) "[t]he unreported case of *Service Associates, Inc v City of Royal Oak* [10]. . . . involved the operation of a concession for food and catering services at the Detroit Zoo . . . . [and] is instructive in the respect that the Court post-*Skybolt* is still using the 'bundle of sticks' concept for evaluating a claim for concession exemption pursuant to MCL 211.181 and MCL 211.7m, and it also involved a similar situation involving the amortization and depreciation of the Tenant's capital investment if its Lease was not renewed," (xvi) Petitioner "is providing the type of essential services for operating a regional airport that are so inextricably tied to the general public (from the individual customers flying large, as well as small commercial aircraft, as well as private aircraft) such that the degree of 'control' exercised by NRAC is consistent with providing a full package of aircraft related services to the general public," (xvii) "[t]he degree of 'control' exercised by NRAC pursuant to the Lease and the 'Minimum Standards' is specifically

[7] See *Air Flite*, 134 Mich App 73, 77-8; 350 NW2d 837 (1984).
[8] See *Skybolt*, 205 Mich App 597, 601-2; 517 NW2d 838 (1994).
[9] Petitioner also indicated that the *Air Flite* Court noted "[t]he Lease provision [in that case] that the Lessor would pay Plaintiff $1,150.00 per month for each month remaining in the base term was merely an equitable provision to assure that Tri-County would not realize a windfall by the early termination of the Lease."
[10] See the unpublished opinion issued by the Michigan Court of Appeals in *Service System* on December 6, 2005 (Docket Nos. 256632 and 256649).

applicable to the building improvements themselves, but . . . [when] coupled with Section 25 of the Lease, present a strong argument that under the 'bundle of sticks' [the] NRAC is effectively the 'owner' of [the] physical improvements for which . . . [Respondent] seeks taxes . . . . [and] [i]n that respect, regardless of whether the Petitioner operates a 'concession' or not, the property should be exempt under . . . [MCL 211.7m]," (xviii) "[a] second reason for tax exemption is that . . . [Petitioner] is operating a concession at a public airport in providing goods and services that are inextricably essential to the NRAC's obligations to . . . [Respondent] in providing airport-appropriate services . . . . [and] [t]he degree of control and oversight exercised by NRAC, FAA, and TSA, even without the additional 'code provisions' and 'assurances' that accompany the 60 pages of Lease and Minimum Standards are consistent with an adjudication that this property should be exempt as a concession," (xix) "[i]n view of the pervasive amount of control to which NRAC is entitled, as well as exercised, and the essential nature of aircraft services being offered to the general public by the Petitioner's business enterprise, the Petitioner contends that it was 'bad faith' for this matter to proceed through all of the various steps, including trial and should thus be afforded its attorney's [fees] under R 792.10209," and (xx) "[t]he *County of Kent* case actually involved two cases that were consolidated . . . . [and] [t]he Court found both . . . [the restaurant and the air service] were concessions exempt from taxation . . . . even though the dissent . . . factually noted 'while . . . [the restaurant] by its lease is held to many specific standards in its operations ranging all the way from hours to personnel, there are none whatsoever in the . . . [air service] lease."[11]

As determined by Petitioner, the subject properties' TCV, SEV, and TV for the tax years at issue should be as follows:

Parcel Number: 28-51-898-036-10

Year	TCV	SEV	TV
2014	$129,600	$64,800	$0.00
2015	$168,200	$84,100	$0.00
2016	$196,400	$98,200	$0.00
2017	$325,200	$162,600	$0.00

Parcel Number: 28-51-898-649-00

Year	TCV	SEV	TV
2014	$270,600	$135,300	$0.00

[11] See *Kent County v City of Grand Rapids*, 381 Mich 640, 652-3 and 659; 167 NW2d 287 (1969).

2015	$262,800	$131,400	$0.00
2016	$281,600	$140,800	$0.00
2017	$662,400	$331,200	$0.00

PETITIONER'S ADMITTED EXHIBITS[12]

P-1 City of Traverse City Lease from Grand Traverse County Register of Deed Liber 390, Pages 150-155.[13]
P-2 Modification & Amendment to Lease recorded in Grand Traverse Register of Deeds Liber 0869, Pages 519-533.[14]
P-3 Lease from Grand Traverse County Register of Deeds Liber 389, Pages 465-477.[15]
P-4 Assignment of Lease from Grand Traverse County Register of Deeds Liber 704, Pages 476-479.[16]
P-5 Assignment of Lease from Grand Traverse County Register of Deeds Document 2007R-20109 (3 Pages).[17]
P-6 First Addendum to Lease (7 Pages).[18]
P-7 Assignment of Leasehold Interest, Fixtures and Associated Personal Property from Grand Traverse County Register of Deeds Document 2014R-07786 (2 Pages).[19]
P-8 Amended and Restated Airport Ground Lease (27 Pages).[20]
P-9 Consent to Assignment of Lease (40 Pages).[21]
P-10 Minimum Standards for Aeronautical Activities (33 Pages).[22]

PETITIONER'S WITNESSES

Kent P. Stiner

Kent P. Stiner was Petitioner's first and only witness. He was not offered or admitted as an expert witness. He did, however, testify that (i) Petitioner is a limited liability company and he is Petitioner's "sole member,"[23] (ii) he is also the "owner and operator" (i.e., sole shareholder,

[12] Petitioner filed a Stipulation as to Authentication of Recorded Documents on March 17, 2017. The Stipulation provides, in pertinent part, "[t]he Parties, by and through their respective counsel, hereby stipulate that the . . . Petitioner shall be permitted to introduce into evidence various recorded documents (copies of which have already been provided to the Court and to the Respondent) without the necessity of authentication through Register of Deeds certification (MRE 902(4) and 1005)." The listed documents are P-1, P-2, P-3, P-4, P-5, and P-7.
[13] See TR. 49.
[14] See TR. 49.
[15] See TR. 49.
[16] See TR. 49.
[17] See TR. 49.
[18] See TR. 33.
[19] See TR. 33.
[20] See TR. 31.
[21] See TR. 35.
[22] See TR. 43.
[23] See TR. 8.

director, and officer) of Cherry Capital Aviation, Inc.,[24] (iii) there was "no" difference in the operations between Petitioner and Cherry Capital Aviation, Inc.,[25] (iv) Petitioner was a "charter company" for the years 2014, 2015, and 2016, while Cherry Capital Aviation, Inc. was "mainly a maintenance company, providing aircraft maintenance to private individuals,"[26] (v) "[t]here are other companies below . . . [Petitioner] . . . . [w]e had a fuel company that we established . . . . [w]e had a charter company . . . . [w]e had flight instruction . . . . [w]e had aircraft rental . . . . [s]everal things,"[27] (vi) Petitioner's assets were sold to 45 North Aviation on January 4, 2017,[28] (vii) Petitioner was established in 2014 and "held the real estate and all assets . . . . [while] Cherry Capital Aviation was like an umbrella corporation that . . . was used as . . . [his] maintenance identity,"[29] (viii) "Evans Avionics leases space from us," "Cherry Capital Flight leases space from us," they operate on the same premises that Petitioner operates on (i.e., "[y]es, sir"), and the subleases had to be and were approved by the NRAC,[30] (ix) Evans Avionics is "mainly an avionics shop, he works on radios and does the avionics side of the aircraft repairs . . . . [while] Cherry Capital Flight is a charter company . . . a 135 operator that provides a service to the public" and their premises and operations are open to the general public (i.e, "[y]es, sir"),[31] (x) Petitioner, Evans Avionics, and Cherry Capital Flight all "operated the same" (i.e., no less stringent operational requirements than Petitioner) and Petitioner is responsible for the performance of the terms of the subleases by the subtenants,[32] (xi) the 2014 Lease (Exhibit P-8) was, until the sale of Petitioner's assets, the lease covering all periods of time (i.e., "[y]es") and covered both parcels at issue (i.e., "[y]es"),[33] (xii) Cherry Capital Aviation, Inc. carries on an aircraft maintenance business and is affiliated with Petitioner, Evans Avionics is a tenant (i.e., "month to month") with its "own business" (i.e., "he has no interest in that corporation"), and Cherry Capital Flight is a tenant and Mr. Stiner owns "half of it,"[34] (xiii) Evans Avionics'

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[24] See TR. 8.
[25] See TR. 9.
[26] See TR. 9.
[27] See TR. 9.
[28] See TR. 9-10.
[29] See TR. 10-11.
[30] See TR. 11-2.
[31] See TR. 12. See also TR. 15 and 34.
[32] See TR. 12. See also TR. 34-5.
[33] See TR. 12-3.
[34] See TR 13-5.

customers "cross over, maybe while the aircraft is there . . . [he] will do some work on the airplane, but . . . [he'll] be working on the engine of the airplane" (i.e., Cherry Capital Aviation, Inc. and not Petitioner),[35] (xiii) Petitioner's customers are the tenants within the building, while the customers of Cherry Capital Aviation, Inc. are "anybody who's got an airplane" – national airlines (i.e., American, United, and Delta) and their subsidiaries and vendors (i.e., GoJet and "we're on call for maintenance there"), "we provide services to NetJets, which is a charter company . . . . [t]he list goes on and on . . . . [w]e actually provide – anybody that lands at Cherry Capital Airport and needs service, we can provide it . . . . [w]e have some contracts in place, but sometimes – we call it on call maintenance . . . . [t]hey're broke, we go out and we fix it,"[36] (xiv) they have to conduct "normal business hours" (i.e., "they don't say . . . [Petitioner and the subtenants] have to be open at 8:00 and close at 5:00 . . . . [b]ut normal business hours that can provide reasonable service to the public,"[37] (xv) he's also "on call . . . . 24 hours, seven days a week" to service any airplanes – the airlines and the general public – and is part of the airport's emergency response team (i.e., "if we have an emergency, aircraft crashes, goes off the runway, airlines, any of that, we are part of the emergency response team for recovery"), which is not mandatory, but requested by the NRAC,[38] (xvi) his business conducts aircraft sales, aircraft rental, and flight instruction to the general public through Up North Flight, a sub-tenant and company that is solely owned by him, which is his "rental company and our sales company also," while aircraft charter is "done by [his subtenant,] Cherry Capital Flight,"[39] (xvii) aircraft "[c]harter is an operation that if you need to go from here to Chicago . . . you would go through the charter side . . . . [i]f . . . you're a pilot, you have a license, [and] you want to rent an aircraft, we provide an aircraft for you to rent . . . . [w]e would also do possibly air rides in that aircraft . . . . [b]ut [the] aircraft is required to return to the same location that it took off from . . . . [w]e cannot go from point A to point B,"[40] (xviii) Cherry Capital Fuel also operated on the premises and was sold in 2014 to AVFlight and "the airport split that piece of property off . . . [his] lease and formed a new lease with that company . . . . [s]o they basically removed that land and redid

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[35] See TR. 15-6.
[36] See TR. 16-7.
[37] See TR. 17.
[38] See TR. 16-8.
[39] See TR. 18-9. See also TR. 34. In that regard, Petitioner is responsible for the performance of the terms of the subleases by the subtenants including UP North Flight. See TR. 34-5.
[40] See TR. 19.

it,"[41] (xix) the lease requires him "to abide by any of the rules that the federal government imposes on . . . [the airport] . . . they would apply also to . . . [him]" including TSA regulations,"[42] (xx) his previous lease (2001) was and current lease (2014) lease is for a period of 20 years and he attempted to negotiate the terms of both leases and "was not able to make any changes,"[43] (xxi) his company owns the buildings that are on the property at issue (i.e., "[c]orrect"),[44] (xxii) under the lease, he has a right to remove the buildings or they go to the airport – "[y]es, that was just added . . . [p]rior to that we were supposed to turn the buildings over to the airport,"[45] (xxiii) "there's two buildings that are attached and then one other building, which that one's a brick building . . . [and] you couldn't remove that one,"[46] (xxiv) "[t]he last building that . . . [he] bought . . . was in quite disrepair, so . . . [the NRAC] pretty much dictated what . . . [he] needed to do before they would sign the lease,"[47] (xxv) he has tried "a couple times" to conduct other public business on the premises that has not been approved (i.e., "it's restricted only to aircraft use"), (xxvi) the NRAC has, however, permitted him to have some weddings and receptions that "we don't charge for" and pancake breakfast fundraisers that were provided to the general public and "aviation oriented,"[48] (xxvii) if he has contractors performing construction work on the property, he has to provide security, which may include fencing off the area in which they are working,[49] (xxviii) the NRAC inspects the property (i.e., "[w]alk through every once in awhile") and "if they see something that is broken or in disrepair, they want it fixed,"[50] (xxix) the lease requires Petitioner to comply with FAA assurances,[51] (xxx) the lease has restrictions on signage, which is enforced by the NRAC,[52] (xxxi) the lease regulates demeanor, conduct, and appearance of employee and invitees,[53] (xxxii) the lease requires

[41] See TR. 19-21.
[42] See TR. 21-3.
[43] See TR. 23.
[44] See TR. 24.
[45] See TR. 24.
[46] See TR. 24.
[47] See TR. 24-5. See also TR. 47.
[48] See TR. 25-6
[49] See TR. 26-7
[50] See TR. 27.
[51] See TR. 27-8.
[52] See TR. 28-9.
[53] See TR. 29. See also TR. 39-40.

Petitioner to have insurance for the premises and dictates the amount of coverage,[54] (xxxiii) the lease provides for the termination of the lease by the lessor for any reason prior to the expiration of the 20-year term and, if terminated, provides for the payment to Petitioner of the "amortized" fair market value of the buildings,[55] (xxxiv) the Minimum Standards are "a rule book on how you conduct business on the airport" that is imposed on Petitioner and its sub-tenants (i.e., "[y]es, sir"),[56] (xxxv) the Minimum Standards require an operator's personnel to be available to serve the public during applicable operating hours and Petitioner is on call "24/7,"[57] (xxxvi) he doesn't differentiate between himself, individually, and the businesses that been operated by Petitioner and Cherry Capital Aviation, Inc.,[58] (xxxvii) services provided by Cherry Capital Aviation, Inc. require certain levels of certification or licensure,[59] (xxxviii) Cherry Capital Aviation, Inc. is considered to be a maintenance facility and not a fixed base operator,[60] (xxxix) his businesses are also considered to be specialized aviation service operators with an obligation imposed by the NRAC to be available to the public by appointment or during business hours (i.e., "[y]es"),[61] (xl) every "six month to a year . . . we have to let . . . [the NRAC] know [among other things] what's stored in our facilities,"[62] (xli) he has constructed facilities for aircraft storage/display, a public lounge, and public restrooms, which the subtenants are "allowed to use . . . and consider . . . as part of their space,"[63] (xlii) his various businesses and subtenants all comply with the Minimum Standards,[64] (xliii) he has worked on his personal automobile, but such personal work is prohibited,[65] (xliv) FAA changes that impact the airport and the lessees are communicated by the NRAC to the lessees and enforced by the NRAC,[66] and (xlv) the NRAC has spoken with them about the condition of the lawn, requested the installation of a sprinkler

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[54] See TR. 29-30.
[55] See TR. 30-1.
[56] See TR. 35.
[57] See TR. 35-6. Petitioner clarified his statements by indicating that his businesses are on call "24/7" and that he is "the one that does most of the calls, but . . . [his] employees also are available." See TR. 37.
[58] See TR. 36-7.
[59] See TR. 37-9.
[60] See TR. 40.
[61] See TR. 40-1.
[62] See TR. 41.
[63] See TR. 41-2.
[64] See TR. 42-3.
[65] See TR. 43-4.
[66] See TR. 44-6.

system, and given directions regarding cleaning, heating, and lighting.[67]

On cross-examination, Mr. Stiner testified that (i) "there are items [in the Minimum Standards] that have a security purpose,"[68] (ii) although the leased premises consist, "in his mind," of "all the buildings," he agrees that the lease says the premises leased would be the land,[69] (iii) his "interpretation" of the lease is that the NRAC will get "anything that's on that lease they're going to get also" when the lease is terminated,"[70] (iv) upon expiration of the current lease he can remove the improvements or the lessor has the right to purchase them from Petitioner and, as a result, he is the owner of the hangar and the improvements,[71] (v) the leases being discussed are "ground" leases,[72] (vi) he "was always under the assumption that if . . . [he] broke the lease or if . . . [he] wasn't complying . . . [with] the lease . . . [he] could lose . . . [his] property,"[73] (vii) the NRAC doesn't tell him what to charge unless he "was charging too much" and then the NRAC would have to approve the charges,[74] (viii) the fueling contract provides for minimum hours, but not the lease or the Minimum Standards,[75] (ix) the Minimum Standards "is an FAA document . . . . [that] is being implemented throughout the country . . . . as a guideline for airports for operations,"[76] (x) the Minimum Standards are primarily for uniformity and safety (i.e., "[c]orrect, yes").[77]

On re-direct examination, Mr. Stiner testified that (i) he has "always had hours" of operation, those hours were communicated to the NRAC, and the NRAC had no objection to those hours,[78] (ii) if American Airlines had a mechanical problem after hours, "[t]hey call the number they're given, which . . . [his] normal business number and . . . . [i]t's transferred every night to . . . [his] personal cell number,"[79] and (iii) it is his "understanding" that if the 20-year lease is terminated after one year, he would receive 19/20th of the value of the improvements,

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[67] See TR. 46-7.
[68] See TR. 51.
[69] See TR. 51-2.
[70] See TR. 53.
[71] See TR. 53-6.
[72] See TR. 56.
[73] See TR. 56-8.
[74] See TR. 58-9.
[75] See TR. 59.
[76] See TR. 59-60.
[77] See TR. 60.
[78] See TR. 71-2. In that regard, Mr. Stiner indicated that the hours of operation are from 8:30 a.m. to 5:00 p.m.
[79] See TR. 72-3.

1/20th if the lease was terminated after 19 years, and no money if the lease is not renewed after the 20-year term.[80]

On re-cross examination, Mr. Stiner testified that paragraph 25 of the lease provides a "purchase procedure" for the NRAC to purchase the improvements if Petitioner does not want to remove the improvements upon the termination of the lease.[81]

There was no further examination by either party.[82]

In response to questioning from the Tribunal, Mr. Stiner testified that (i) he sold Petitioner's assets to 45 North Aviation on January 4, 2017, and now works for that company,[83] (ii) he has no ownership interest in 45 North Aviation,[84] and (iii) 45 North Aviation is now the lessee (i.e., "[t]hey are").[85]

RESPONDENT'S CONTENTIONS

Respondent contends that the evidence presented in this case supports a determination that the subject properties are lawfully assessed and that the assessment should be affirmed. Specifically, Respondent contends[86] that (i) Petitioner "leases two properties at the Cherry Capital Airport, each of which is improved with hangar buildings," (ii) "[t]he properties are leased from the . . . NRAC," (iii) "[t]he leaseholds of . . . [Petitioner] and the . . . [NRAC] are evidenced by a number of leases, which are exhibits to this case . . . . [nevertheless,] [t]he NRAC . . . leased both . . . [parcels] to . . . [Petitioner] in a lease dated March 18, 2014 (Exhibit P-8), with a renewable term of 20 years . . . . [and] [t]his lease requires . . . [Petitioner] to comply with the document 'Minimum Standards for Aeronautical Activities,' which is Petitioner's Exhibit 10," (iv) "[t]he lease includes a list of allowable purposes: 'aircraft maintenance business, including aircraft sales, aircraft charter, aircraft rental, flight instruction, and other general

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[80] See TR. 74.
[81] See TR. 75-7.
[82] See TR. 77.
[83] See TR. 31-2.
[84] See TR. 32.
[85] See TR. 32.
[86] Respondent did not make an opening statement. Rather, Respondent requested the opportunity for the parties to submit post-hearing briefs and said request was granted. See TR. 78-9. In that regard, Respondent submitted a post-hearing brief on May 17, 2017, and a response brief on May 31, 2017. Although the post-hearing brief summarizes the facts purportedly established by the testimony provided and exhibits admitted and Respondent's legal arguments in support of its contention, the response brief addresses Petitioner's contentions regarding the exemption of the underlying land as being tax exempt. The land is, not, however, at issue. More specifically, the property at issue is the hangar only. See also Respondent's February 5, 2016 and March 24, 2016 answers and the March 8, 2017 Prehearing Summary.

aviation activities as may be approved in writing by the lessor,'" (v) "Section 8 of the lease requires compliance with the Federal Aviation Act," (vi) "Kent Stiner is the sole member of . . . [Petitioner], whose customers are the subless[ee] businesses that operate in these hangars (Transcript [Page] 16) . . . [and] [s]ome of those businesses . . . are partially owned by Kent Stiner or . . . [Petitioner] . . . [and] provide charter services, aircraft maintenance, aircraft fuel, flight instruction, and aircraft rental (Transcript Page 13)," (vii) "[b]oth . . . [parcels] are each improved with hangar buildings . . . [and] [t]he March 18, 2014 lease provides, that, upon expiration of the lease, the lessee have 120 days to remove improvements (Exhibit p-8, pg. 19) . . . [and] that if the lessee fails to remove the improvements, the lessor will have the option to purchase the improvements from the lessee," (viii) "[t]he Minimum Standards for Aeronautical Activities (Exhibit P-10) lists requirements for different categor[ies] of business applicable to the airport . . . . [and] require that businesses operating on the airport grounds adhere to certain security standards . . . . keep their premises open during . . . posted business hours . . . [and] [i]f a business does not post hours . . . 'provide for an adequate means of contacting the operator to arrange an appointment," (ix) MCL 211.181 "has no application to this matter," as "[b]y its clear terms, MCL 211.181 only pertains to property which is 'exempt for any reason from ad valorem taxation' and which 'is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit' . . . . [and] the hangar buildings and any other improvements are owned by the Petitioner . . . . [and, as such,] cannot be the subject of a lease by the Airport to the Petitioner," (x) alternatively, Petitioner would only qualify for an exemption under MCL 211.181 if it meets "both of two requirements . . . . [f]irst it must establish that the subject property is used as a concession, and second, the property must be available for use by the general public," (xi) "[t]he *Tygard* Court found that the property involved in that case, whether a leasehold or rental agreement, was not a concession because it did not establish minimum hours during which the tenant's services were offered, and did not establish minimum standards of service,"[87] (xii) the 2014 Lease "lists the

[87] See *Detroit v Tygard*, 381 Mich 271, 275-6; 161 NW2d 1 (1968). In that regard, the Michigan Supreme Court actually stated in *Tygard* that:

> ". . . we believe **the concept of specific obligations** on the part of the privileged party **to maintain particular services at specified times is an incident of a concession**. We find no such obligations imposed by the agreement here under consideration. No minimum hours during which

various activities for which the Petitioner may use the leased premises, but doesn't require that it use the premises for any one specific purpose," (xiii) the 2014 Lease "gives the Petitioner the right to construct improvements on the leased premises, which improvements are the property of the Petitioner," (xiv) the 2014 Lease "does not establish the Lessee to be a concessionaire . . . . [as the Lease] requirements apply to lessees at the Airport, in general, regardless of whether the Lessee is a concessionaire,"[88] (xv) the 2014 Lease also "provides that the Lessor must compensate the Lessee for the fair market value of the improvements if it terminates the Lease before the expiration of the Lease term . . . . [and, as such,] recognizes the significant property rights the Lessee has in the improvements it placed on the premises," (xvi) "[t]he Minimum Standards, which are very detailed . . . [and] heavily relied upon by the Petitioner . . . show[] that they are not standards designed to require lessees to meet certain standards or minimum hours of service . . . . [r]ather, they are . . . . clearly safety and security standards, not customer service standards," (xvii) "[t]he Minimum Standards do not require minimum hours of service . . . . [r]ather, they leave the determination of hours of service solely up to the Lessee whose only duty in that regard is to advise the Airport of its 'proposed hours of operation when it submits its application to operate at the Airport," (xviii) "the Minimum Standards . . . [also] do not require [a] standard for services to the public, or oversight of the Lessee's activities to meet the requirements of a concessionaire . . . . [r]ather, they regulate the provision of those services in a manner designed to protect the public safety and airport security . . . . [and] Petitioner itself acknowledges this," (xix) "the business of Petitioner is primarily subleasing its interest in the subject property to other entities . . . . [t]he result is that the Petitioner itself is involved in very

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> the services offered must be made available to the public are required. No standards of service are mandated. **Of course, the services offered must bear a reasonable relationship to the purposes of a public airport.** That element in part is present here, particularly the storage and servicing of aircraft. We are not furnished any figures as to what percentage of appellants' business is concerned with the storage and servicing of transient aircraft, **certainly one of the most important uses of a public airport.** We would not be understood to mean that we negate as a proper use of a public airport the storage of locally based aircraft." [Emphasis added.]

Respondent also cites *Golf Concepts v City of Rochester Hills*, 217 Mich App 21, 29; 550 NW2d 803 (1996), *app den* 454 Mich 868; 560 NW2d 632 (i.e., "[t]he provisions in the lease contract between the parties do not rise to the level of specific obligations on the part of petitioner, the privileged party, to maintain particular services at specified times").

[88] Respondent also indicated that the 2014 Lease "forth conditions upon the Lessee's use of the premises . . . . [and] [t]he listed conditions are not such as would make the Lessee a concessionaire under *Tygard* or *Golf Concepts* . . . . [as] [t]he conditions set forth . . . are no different than what one would expect to find in any ground lease."

little airport activity itself . . . . [as] [n]early all of the activity is carried out by other entities – entities in which Petitioner may, or may not, have any ownership interest . . . . [i]n that regard, the Petitioner's activities are more akin to those of the Petitioner in *Skybolt* . . . . [and] [i]n *Skybolt*, the space occupied by Petitioner for its fixed base operator activities . . . [was] exempt as a concession, but the space leased to Simmons Airlines for its maintenance activities was not,"[89] and (xx) "Petitioner is merely a sublessor who sublets all of the premises to other entities, which may or may not provide services to the general public, but such services are not provided by Petitioner."

As determined by Respondent, the subject properties' TCV, SEV, and TV for the tax years at issue should be as follows:

Parcel Number: 28-51-898-036-10

Year	TCV	SEV	TV
2014	$129,600	$64,800	$63,804
2015	$168,200	$84,100	$64,824
2016	$196,400	$98,200	$65,018
2017	$325,200	$162,600	$65,603

Parcel Number: 28-51-898-649-00

Year	TCV	SEV	TV
2014	$270,600	$135,300	$123,790
2015	$262,800	$131,400	$125,770
2016	$281,600	$140,800	$126,147
2017	$662,400	$331,200	$127,282

RESPONDENT'S ADMITTED EXHIBITS[90]

R-1 2015 Application documents provided to December Board of Review.[91]

FINDINGS OF FACT

The following facts were proven by a preponderance of the evidence:

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[89] The Court of Appeals actually stated in *Skybolt, supra* at p 603 that "[u]nlike the hangar space reserved for Skybolt's operation, the Simmons hangar area was not available for use by the public." Petitioner also indicated, in response to Respondent's "Simmons" contention, that Mr. Stiner "testified that all of the sub-lessees were providing services to the general public (Transcript Page 34), that each of these sub-leases had to be approved by [the] NRAC (Transcript Page 34), and that each of those sub-lessees were subject to the same terms as the . . . primary Lease, as well as the 'Minimum Standards' (Transcript Pages 41-42)."

[90] Although Respondent had ten proposed exhibits, Respondent only offered R-1 for admission.

[91] See TR. 68.

1. Parcel No. 28-51-898-036-10 is located at 1180 Airport Access Road, Traverse City, MI and Parcel No. 28-51-898-649-00 is located at 1190 Airport Access Road, Traverse City, MI. Both parcels are located in Grand Traverse County.
2. The properties are classified as commercial real and have principal residence exemptions of 0% for the tax years at issue.
3. The properties are hangars located at the Cherry Capital Airport ("Airport"), which is a public airport.
4. The Airport land is owned by the Northwestern Regional Airport Commission ("NRAC") on behalf of Grand Traverse County and Leelanau County ("Counties"), who are its sole members.
5. The Airport is operated by the NRAC on behalf of the Counties.
6. The Airport land underlying the hangars is leased to Petitioner by the NRAC.
7. Petitioner, its controlled subtenants, and other sub-lessees use the hangars in connection with businesses conducted for profit.
8. Based on the terms of the Lease between Petitioner and the NRAC, the NRAC is the owner of the hangars and, as such, the hangars are also being leased to Petitioner by the NRAC.
9. Petitioner, through its controlled subtenants and other sub-lessees its controls, utilize the hangars in their entirety to provide, among other services, non-discriminatory aircraft and aircraft radio maintenance services to the general public.
10. Based on the terms of the leases between Petitioner, its controlled subtenants, and other sub-lessees and the NRAC and the Minimum Standards applicable under those leases, the hangars are used as a concession.

ISSUES AND CONCLUSIONS OF LAW

The issue in this matter is whether the property at issue (Petitioner's hangars) qualifies for a property tax exemption under MCL 211.7m or 211.181. With respect to the purported applicable statute or statutes, MCL 211.7m provides:

> 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. Parks shall be open to the public generally. This exemption shall not apply to property acquired after July 19, 1966, unless a deed or other memorandum of conveyance is recorded in the county where the property is located before December 31 of the year of acquisition, or the local assessing officer is notified by registered mail of the acquisition before December 31 of the year of acquisition. [Emphasis added.]

MCL 211.181 also provides, in pertinent part:

> (1) Except as provided in this section, **if real property exempt for any reason** from ad valorem property taxation **is leased**, loaned, or otherwise made available to **and used by a private individual, association, or corporation in connection with a business conducted for profit, the lessee** or user of the real property **is subject to taxation** in the same amount and to the same extent as though the lessee or user owned the real property.
>
> (2) Subsection (1) does **not** apply to all of the following . . .
>
> (b) Property that is **used as a concession at a public airport**, park, market, or similar property and that is available for use by the general public . . . . [Emphasis added.]

To be eligible for the requested exemption, Petitioner has the burden of proving membership in the already exempt class by a preponderance of the evidence or beyond a reasonable doubt if Petitioner is attempting to establish a class of exemptions.[92] As for the Tribunal, the Tribunal is required to "strictly construe" the applicable exemption statute or statues "in favor of the taxing authority."[93]

Here, Petitioner is appealing the denial of its request for the correction of a "qualified error" by Respondent's 2015 December Board of Review for the 2014 and 2015 tax years.[94] In that regard, the petition identified the purported "qualified error," as "[a]n error regarding the correct taxable status of the real property being assessed . . . ."[95]

As a starting point, it is undisputed that the underlying land leased to Petitioner is owned by the NRAC whose members consist solely of Grand Traverse and Leelanau Counties, that the NRAC was formed by the Counties to have "jurisdiction and control" over the Cherry Capital Airport, and that the Airport serves a public purpose (i.e., public airport).[96] It is also undisputed that the leased land upon which the subject properties (i.e., hangars) are located could be subject to taxation under MCL 211.181(1), but not under MCL 211.7m given the NRAC's ownership of

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[92] See *ProMed Healthcare v Kalamazoo*, 249 Mich App 490, 494-495; 644 NW2d 47 (2002).
[93] See *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 664; 378 NW2d 737 (1985); and *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 753-754; 298 NW2d 422 (1980).
[94] See MCL 211.53b(1) (i.e., "a correction under this subsection may be made for the current year and the immediately preceding year only").
[95] See MCL 211.53b(10)(f).
[96] Although the parties' arguments related to both the land and the hangars, the only property or, more appropriately, properties at issue are the hangars.

the land and the public purpose for which the land is utilized. In that regard, the construction and use of hangars on leased land has also been found to be "merely incidental to the main purpose" of an airport and "in keeping with the general purpose of the airport," as it "tends to increase the value to the public of the facilities thereof."[97] As such, the only outstanding issues relate to who owns the hangars, Petitioner or the NRAC, and the commercial use of those hangars, if owned by the NRAC and leased to Petitioner for said commercial use.[98]

In that regard, MCL 211.8 provides, in pertinent part:

> For the purposes of taxation, personal property includes all of the following . . . .
>
> (d) For taxes levied before January 1, 2003, buildings and improvements located upon leased real property, except if the value of the real property is also assessed to the lessee or owner of those buildings and improvements. **For taxes levied after December 31, 2002, buildings and improvements located upon leased real property**, except buildings and improvements exempt under section 9f or improvements assessable under subdivision (h), **shall be assessed as real property** under section 2 **to the owner of the buildings or improvements** in the local tax collecting unit in which the buildings or improvements are located if the value of the buildings or improvements is not otherwise included in the assessment of the real property. For taxes levied after December 31, 2001, buildings and improvements exempt under section 9f or improvements assessable under subdivision (h) and located on leased real property shall be assessed as personal property . . . .[99]
>
> (h) During the tenancy of a lessee, leasehold improvements and structures installed and constructed on real property by the lessee, **provided and to the extent** the improvements or structures **add** to the true cash taxable value of the real property notwithstanding that the real property is encumbered by a lease agreement, **and the value added** by the improvements or structures is **not**

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[97] See *Rockwell Spring and Axel Company v Romulus Township*, 365 Mich 632, 643; 114 NW2d 166 (1962). The Michigan Supreme Court also stated, in *Rockwell Spring* on p 643, "[t]he airport is a unit, and it would scarcely be feasible to separate the space therein contained for purposes of taxation." Although *Detroit Museum of Art*, 187 Mich 432; 153 NW 700 (1915) was cited in prior Small Claims cases in support of the contention that the use of buildings or hangars on a public airport does not support the public purpose required for the exemption, the public purpose discussion in *Detroit Museum* appears to be contained in the dissent and relates to the formation of a private corporation for the public exhibition of the corporation's collection of works of art. However, the *Rockwell Springs* case relates to hangars and is, given the circumstances of this case, better law. Further, the evidence provided indicates that Petitioner's use of the buildings or hangars for maintenance of aircraft provides a service to the airport that is necessary for the airport's public purpose.

[98] Although Petitioner's witness testified that the hangars were owned by Petitioner, said testimony is irrelevant, as indicated herein.

[99] MCL 211.9(f) has no applicability to the instant case as that statute or subdivision thereof relates to the exemption of new personal property "owned or leased by an eligible business."

> otherwise included in the assessment of the real property or not otherwise assessable under subdivision (j). The cost of leasehold improvements and structures on real property shall not be the sole indicator of value. **Leasehold improvements and structures assessed under this subdivision shall be assessed to the lessee** . . . .
>
> (j) **To the extent not assessed as real property**, a leasehold estate of a lessee created by the difference between the income that would be received by the lessor from the lessee on the basis of the present economic income of the property as defined and allowed by section 27(5), minus the actual value to the lessor under the lease. This subdivision does not apply to property if subject to a lease entered into before January 1, 1984 for which the terms of the lease governing the rental rate or the tax liability have not been renegotiated after December 31, 1983. This subdivision does not apply to a nonprofit housing cooperative. As used in this subdivision, "nonprofit cooperative housing corporation" means a nonprofit cooperative housing corporation that is engaged in providing housing services to its stockholders and members and that does not pay dividends or interest upon stock or membership investment but that does distribute all earnings to its stockholders or members . . . . [Emphasis added.]

As such, the hangars are real property and assessable to the owner of the hangars.[100]

The issue of ownership in such situations has been addressed in a variety of tax cases and the courts have focused on who retained the majority of the "bundle of sticks" generally associated with property ownership based on the amount of control exerted over the "building or improvements" (i.e., hangars) under the lease (i.e., "ultimate" or "overall" control).[101] In that regard, the Wisconsin Supreme Court stated in *Mitchell Aero, Inc v City of Milwaukee*, a case cited and distinguished by the Michigan Court of Appeals in *Air Flite*:[102]

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[100] Although not raised in this case, a preliminary issue in such cases has been whether such hangars are taxable as personal property and the courts have held that hangars are real property because under "[b]oth common law and by statute, buildings placed upon real property become part of the real property." See *Air Flite*, *supra* at p 77.

[101] In addition to the above-noted case (i.e., *Rockwell*), see *Skybolt*, *supra* at p 600 (i.e., "the city exerted ultimate control over the property and Skybolt's rights as lessee were strictly limited"), *Golf Concepts*, supra at p 33 (i.e., "*Skybolt* is distinguishable . . . because petitioner's rights as a lessee are not strictly limited"), *Air Flite*, *supra* at pp 77-78 (i.e., "the lessor was given the bulk of the rights of ownership"), *Service System Associates*, supra (i.e., "the tribunal determined that the clear terms of the agreement demonstrated that the City of Detroit owned the property, including the equipment, buildings and building improvements"), and *Brasseur v Rutland Charter Township*, MTT Docket No. 292326 (February 5, 2004). (i.e., "[t]he interpretation of MCL 211.7m and the applicable case law by the Michigan Courts make it clear that buildings built upon publicly owned property and leased to the builder are tax exempt").

[102] See *Mitchell Aero, Inc v Milwaukee*, 42 Wis 2d 656; 168 NW2d 183 (1969). In distinguishing *Mitchell Aero*, the Court of Appeals stated in *Air Flite*, *supra* at p 78:

> Ownership is often referred to in legal philosophy as a bundle of sticks or rights and one or more of the sticks may be separated from the bundle and the bundle will still be considered ownership. **What combination of rights less than the whole bundle will constitute ownership is a question which must be determined in each case in the context of the purpose of the determination.** [Emphasis added.]

Although distinguished, the decision in *Mitchell Aero* correctly indicates that the leases must be reviewed to determine what sticks are held by the lessor and the lessee under each lease.

In the instant case, the March 18, 2014 Amended and Restated Lease (Exhibit P-8) provides for the leasing of "certain premises at the Cherry Capital Airport . . . . for the following purposes only, and for no other purpose whatsoever, **unless agreed** to in writing **by the Lessor**: carrying on an aircraft maintenance business, including aircraft sales, aircraft charter, aircraft rental, flight instruction, and other general aviation activities **as may be approved** in writing **by the Lessor, all of which are subject to** certain rights, licenses, and privileges, together with any other purposes related to aviation **which is otherwise approved** in writing **by the Lessor,** to be located on the leasehold premises described herein."[103] [Emphasis added.] The Lease also provides, among other things:[104]

> Though factually similar in some respects, **the lease terms** there in other respects **were totally different than those in the case before us**. No rent was charged for the space in the hangar which the lessee agreed to build, there was no provision for periodic increases in rent, and **the lease included an amortization formula which assured the lessee of recovery of its investment**. It is not surprising, therefore, that the majority opinion concluded that the arrangement was not a bona fide conveyance of buildings to the airport, but was "a hybrid arrangement, possibly to obtain both a tax exemption and the amortization of the cost of the buildings." 42 Wis2d 665; 168 NW2d 183. Also, the opinion was not unanimous. **A strong dissenting opinion found "only one stick" of the bundle of ownership sticks left with the lessee.** [Emphasis added.]

[103] The March 18, 2014 First Addendum to Lease (the "Addendum") addresses the specific premises to be leased, which includes an "additional parcel" to the original leasehold premises (i.e., "revised leasehold premises"). See Exhibit P-6. The March 18, 2014 Amended and Restated Lease (the "Lease") also identifies the revised leasehold premises and the purposes for which the premises may be used. See Exhibit P-8. Both the Addendum and Lease provide, in pertinent part:

> "Further, Lessee shall have the privilege of using for the term of this Lease, or any extension thereof, in common with others and the public, the Cherry Capital Airport, subject to the charges, rules, and regulations governing such airport issued by the Federal and State Aeronautical Agencies and by the local governing authority, it being expressly understood that this privilege covers the entire period of the Lease and extensions thereof as hereinafter set forth."

Finally, the leased premises could not, as a practical matter, be utilized for the identified purposes without the existence of the constructed hangars.

[104] The Lease dictates the form of any sublease and provides, in pertinent part:

(i) for a lease term of 20 years with an option to extend for an additional 20-year period **provided certain conditions have been met** by Lessee;

(ii) for the payment of annual rent to be **adjusted** by cost-of-living increases every two years during the term of the lease **and revised** to cover the airport's required expenditure of additional funds for security, safety equipment, public safety, public health, etc.;[105]

(iii) "[t]he aviation business as operated pursuant to this Lease **shall meet all requirements** contained in 'Minimum Standards for Aeronautical Activities for the Cherry Capital Airport' as contained in Ordinance Policy 12-1, and as amended ('Minimum Standards')";[106]

(iv) "**[n]**o portion of the leased premises **shall be used** in a manner or for a purpose **which, in the opinion of the Lessor, may interfere with** the proper use of the airport by others **or which violates** written rules, regulations, policies, and minimum standards of the Lessor or other competent authority or agency";

(v) Lessee may, with prior written approval, "improve" the leasehold premises;[107]

> Any such sublease is an accommodation to Lessee's multiple lease agreements with the NRAC, the combination of which provide Lessee with control over sufficient contiguous premises at the Cherry Capital Airport **in which to conduct multiple aviation related businesses consistent with Minimum Standards** as herein defined. [Emphasis added.]

[105] Although the rental increases are automatic, the rental revisions are the result of required expenditures "in excess of available State and Federal funding" and the Lessee has a right to terminate the Lease "after the imposition" of any such revision. See also *Air Flite, supra* at p 77.

[106] In that regard, the Lease also provides, in pertinent part:

> "The Lessee **agrees to restrict** activities conducted on the leasehold to **only** those uses permitted under this Lease, **and** in accordance with the Minimum Standards. At the commencement of the term of this Lease, Lessee **shall provide** Lessor with written notice of all activities authorized as referenced herein which Lessee conducts upon the leasehold premises, **and shall provide** Lessor with **verification of all necessary certification to conduct such uses**, including verification that such activities are properly insured as otherwise required under the terms of this [L]ease." [Emphasis added.]

[107] With respect to construction of improvements, the Lease also provides, among other things:

a. "Lessor agrees that at the expiration of this lease or any renewal thereof, Lessee **may**, within a reasonable time **remove** any and all buildings, structures, or other improvements placed or erected on said premises by the Lessee during the term thereof or any renewal thereof, **and all expenses connected with such removal shall be borne by Lessee**";
b. "any agreements between Lessee and contractor shall require that the contractor provide a lien free completion of construction";
c. "Lessee shall further cause a construction contract, financing arrangements, bonds and other documents to authorize Lessor the right to pursue the construction project to completion in the event of a default of Lessee, which construction completion performed by Lessor shall be at Lessee's sole expense";
d. "[i]f the Lessee makes any improvements without the Lessor's approval, then Lessor may, at its option, in addition to any other remedies which may be available to it, give written notice to Lessee to remove the same or, at the option of the Lessor, cause the same to be changed to the satisfaction of the Lessor"; and,
e. "**[n]**o temporary structures shall be erected or placed upon the leasehold premises **without** the express written approval of the Lessor" and any permitted temporary structure "**shall** meet the requirements of **all**

(vi) Lessee shall, "at its own expense . . . keep the said premises in a **neat and orderly appearance**";

(vii) Lessor has "the right to **enter** upon" and **inspect** the leasehold premises "at all reasonable times **during business hours** . . . **or** for the purpose of making changes or alterations required by any existing or subsequent law";

(viii) Lessee "agrees to comply with all required provisions of the Federal Aviation Act" and "sponsor assurances" (i.e., agreements between the NRAC and the Federal Aviation Administration relating to obligations undertaken by the NRAC resulting from the receipt of federal aid for the development of the airport);[108]

(ix) limitations on the painting, posting, or display of signs and advertising without Lessor's prior consent;

(x) "[t]he Lessor **shall have the right to complain** to the Lessee **as to the demeanor, conduct and appearance of the Lessee's employees, invitees and those doing business with it**, whereupon the Lessee **will take all steps necessary to remove the cause of the complaint**";

(xi) "[t]he Lessor reserves the right to further develop and improve the landing are and/or facilities of the Cherry Capital Airport, including the premises herein demised, **regardless of the desires or views of the Lessee in this regard, without interference or hindrances and free from any liability to the Lessee**";

(xii) Lessee is required to maintain and "furnish evidence" of insurance with the NRAC named as an additional insured and liability limits as determined by the NRAC;

(xiii) a reservation of the "right of flight for the passage of aircraft in the airspace above the surface of the premises herein leased";

(xiv) a **limitation** on the storage of "any and all flammable liquids or other hazardous materials" on the leasehold premises;

(xv) Lessee agrees "that it will **not** make use of the leased premises in any manner which might interfere with the landing and taking off of aircraft from the airport or otherwise constitute a hazard" and that the NRAC has "the right to enter upon the premises" to abate said interference or hazard at the Lessee's expense;

(xvi) a **prohibition** on the storing of equipment outside of any existing structure on the leasehold premises **without** the express written approval of the Lessee";

(xvii) "if Lessee has control of an area accessing the air operations or an otherwise restricted area of the airport as designated in the Cherry Capital Security Plan, the Lessee shall be responsible for enforcement of all security measures imposed for said access point";

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applicable ordinances, regulations, and **standards of the . . . [NRAC]** and the City of Traverse City." [Emphasis added.]

[108] The Lease also provides that "Lessee further **agrees** that all federal, state and local laws **will be observed, including** the rules and regulations of the federal, state and local aeronautical authorities and **the policies, regulations, and minimum standards of the local governing airport commission**" (i.e., the NRAC). [Emphasis added.]

(xviii) **the improvements become the property of the NRAC upon termination, cancellation, or forfeiture of the Lease due to Lessee's default, breach, insolvency, bankruptcy, or receivership;**[109]

(xix) "**[n]o** rubbish, waste material, garbage or other trash shall be placed or stored on the premises **in other than approved containers**";

(xx) Lessor **may terminate** the lease **at any time and acquire** the improvements **by paying** the Lessee the **market value** of the improvements determined under the lease **as adjusted "by an anticipated term of years equal to the then determined useful life of the improvements, or a term of twenty (20) years, whichever is less.**" [Emphasis added.]

Although, the Lease does provide Petitioner with the right to possess the hangars and dispose of them through both sale (i.e., assignment of the lease, transfer of ownership issue, etc.) and removal, said disposal is limited as the sale must be approved by the Lessor or, more specifically, the NRAC and the removal of the hangars is, as indicated by the testimony, impractical and unlikely given the cost associated with such removal.[110] In that regard, the Lease also provides that the hangars become the NRAC's property upon termination of the Lease due to default, breach, and insolvency and that the NRAC can purchase the hangars upon the Lease's termination for any other reason or expiration.[111] The purchase price, as determined through an appraisal process dictated by the Lease, would, however, be discounted by the hangars' useful life or remaining lease term, whichever is less.[112] As such, Petitioner may have "only one stick in the bundle of ownership sticks."[113]

With respect to the control issue, the items listed above do address control over the hangar by the NRAC. The majority of the control being exercised by the NRAC does, however,

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[109] A default under the Lease includes, but is not limited to, a failure to pay rent when due; **a failure to perform any of the terms and conditions under the Lease**, other than the payment of rent; and an attempted transfer of the Lease without receiving the NRAC's prior consent. [Emphasis added.] In that regard, the Lease also provides that "[a]ny transfer of corporate control or of fifty percent (50%) or more of the outstanding voting equity ownership of the Lessee **shall be construed** to be an assignment of this lease." [Emphasis added.]

[110] Sub-leasing also strictly controlled by the Lease and Minimum Standards.

[111] See also the Minimum Standards, Section 6 (Construction and Site Development Standards) on p 6.

[112] The purchase price on expiration of the Lease would be $0.00. As for other payments based on the remaining useful life or the remaining lease term, said payments would be "equitable" in nature to "assure that . . . [the NRAC} would not realize a windfall by the early termination of the lease." See *Air Flite, supra* at pp 77-8.

[113] See *Eastbrook Homes, Inc v Treasury Dep't*, 296 Mich App 336, 348; 820 NW2d 242 (2012) (i.e., "'[t]he union of all elements (as ownership, possession, and custody) constituting the legal right to control and dispose of property....'") and *Adams v Cleveland-Cliffs Iron Co*, 237 Mich App 51, 57-59; 602 NW2d 215 (1999) (i.e., "which is usually understood to include '[t]he exclusive right of possessing, enjoying, and disposing of a thing'").

appear to relate more to airport operations than ownership of the hangars.[114] Nevertheless, those items have been found to constitute sticks within the bundle of sticks and must be treated as such. In that regard, the Tribunal in *Brasseur* stated, in pertinent part:

> To determine control of the hangars we must look to the terms of the lease. Respondent relies heavily on *Mitchell Aero* as persuasive case law in this dispute and cites several analogous factors in both Petitioner's lease and *Mitchell Aero's* lease. Respondent argues that **Petitioner does not pay rent** for the use of the hangar**, nor is he subject to rent increases, but he is responsible for upkeep and maintenance**. Additionally, Respondent argues that the **lessor does not control improvements** made to the hangars, **or retain the right to increase insurance coverage**. Finally, Respondent argues that **Petitioner receives payment if the property was condemned**, and finally that **Petitioner has a full 30 years to recoup his investment for the two hangars**, which provides the ability to amortize and recover his investment in the property. Respondent reasons that these factors provide Petitioner with virtually unlimited control over the hangars, and as such, Petitioner should be taxed accordingly.
>
> In contrast, Petitioner argues when the "bundle of sticks" analogy is applied, the ownership of the hangar is vested in the Airport Authority because **the lessor retained strict control over the plans and specifications for the hangars prior to them being built**. Further, **the lessees do have the full right and authority to sub-lease the hangars; they may not assign or transfer** their lease **without the written consent of the lessor**. The **rent** for the hangars **was paid** to the Airport **through the construction costs of the building**. Additionally, **the lease limits the use of the premises for the construction, maintenance, and operation of airplane hangars and the storage of airplanes**. Also, **the lessor airport can take any actions it considers necessary to protect aerial approaches of the Airport against obstruction, and can prevent the hangar lessees from erecting or permitting to be erected any building or other structure on the Airport that would constitute a hazard to the aircraft**. Finally, **the lease requires the lessees to "yield and deliver up" the hangars at the expiration of the 30-year lease term**.
>
> The Michigan Court of Appeals held in *Air-Flite* that an airplane hangar constructed by a lessee pursuant to a lease was real property owned by the lessor airport commission based on the lessor having **the overall right to control** the subject property. *Air-Flite*, 134 Mich App 73. Therefore, **in applying the *Air-***

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[114] The *Mitchell Aero* court provided at p 665:

> Under this lease arrangement, some of the rights usually associated with ownership are in Aero and others are in the county . . . . Such control the county keeps over these hangars is **not** indicative of true ownership **but concerns the operation of the airport**. [Emphasis added.]

> ***Flite* rule to the instant case, the airplane hangar built by the lessee Petitioner pursuant to a lease agreement with the Airport Authority becomes real property with ownership ultimately vesting with the Airport Authority.** [Emphasis added.]

Although the instant case is more similar to *Air-Flite* than *Brasseur,* both cases indicate that the control exercised by the NRAC is, as detailed above, sufficient to support a conclusion that the NRAC has the "bulk" of sticks or, more specifically, overall control over the hangar and is the "ultimate" owner of the property at issue and not Petitioner.[115] As a result, the hangars are, contrary to Respondent's contentions, owned by the NRAC and technically leased to Petitioner requiring a determination as to whether the hangars or, more appropriately, the commercial use of the hangars qualifies as a concession.

With respect to the commercial usage of the hangars, Respondent contends that the hangars are not used as a concession, as neither the Lease nor the Minimum Standards[116] establish minimum standards of service to the public including oversight of those services or minimum hours of operation.[117] Respondent further contends that the hangars are also not available for use by the general public or, more specifically, that Petitioner does not provide services to the general public, as Petitioner's customers are its sub-lessees and not the general public.

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[115] Unlike the *Brasseur* case, Petitioner in this case pays rent that is subject to increases. Further, the lessor in this case controls improvements and retains the right to increase insurance coverage. As for the disposition of the hangars, Petitioner in this case is also required to "yield and deliver up" the hangars upon the expiration of the lease. Although the Lease in this case, unlike the *Brasseur* case, provides for the purchase of the hangars upon termination of the Lease, the purchase price upon expiration would be $0.00, as indicated herein, resulting in same "yielding" and "delivery" of the hangars.

[116] The Lease provides, in pertinent part:

> The aviation business as operated pursuant to this Lease **shall meet all requirements** contained in "Minimum Standards for Aeronautical Activities for the Cherry Capital Airport" as contained in Ordinance 12-1, and as amended ("Minimum Standards"). The Lessee agrees to restrict activities conducted on the leasehold to only those uses permitted under this Lease, **and in accordance** with the Minimum Standards. [Emphasis added.]

[117] See *Skybolt*, *supra* at p 602 and *Golf Concepts*, *supra* at pp 28-9. The Court of Appeals in Golf Concepts also stated on p 28 (citing to *Seymour v Dalton Twp*, 177 Mich App 403, 406; 442 NW2d 655 (1989)):

> The Court stated that the concessionaire is required to offer services that have a reasonable relationship to the purposes of the granting entity. If that entity merely privatizes its entire operation, then a tax exemption would be contrary to the broader purpose of the lessee-user tax.

In addressing those contentions, the first level of review must relate to whether the services provided are "services customarily and needfully required at airports."[118] Clearly, aircraft maintenance, which is a service provided by Cherry Capital Aviation, Inc. (i.e., a controlled subtenant) and one of Petitioner's sub-lessees, is not only "customarily" provided by airports, but also essential to the operation of an airport. Further, Mr. Stiner also testified that he or, more appropriately, as a representative of Cherry Capital Aviation, is a member of the Airport's Emergency Response Team, which is also a service "customarily" provided by airports and essential to their operation. As for the other services provided by Petitioner, its controlled subtenants, and other sub-lessees (i.e., aircraft sales, aircraft rental, and flight instruction), such services are consistent with the "development of aeronautics" and provide "convenience and comfort of air travelers."[119] More importantly, such services, even if determined not to be "customary" or "needful," are intermingled with the clearly "customary" and "needful" maintenance and avionics services, as Petitioner, its controlled subtenants, and other sub-lessees share the same premises (i.e., both hangars).

As for the standards and oversight applicable to those services, the Lease requires Petitioner to "control" the premises and reserves to the NRAC the right to inspect. Petitioner, its controlled subtenants, and other sub-lessees are also required under their separate leases and the Minimum Standards to "employ trained personnel in such numbers as are required to meet the applicable Minimum Standards set forth herein in an efficient manner for each aeronautical activity or service being performed"; "provide a responsible person to supervise the operations in any leased area and on the Airport, with authorization to represent and act for and on behalf of the Operator during all business hours"; and "provide . . . [the NRAC] with a roster of qualified personnel who are available after normal business hours to respond to emergency situations involving . . . [the hangars'] activities." Petitioner, its controlled subtenants, and other sub-lessees are further required to "control the conduct, demeanor, and appearance of its employees"; "train its employees and ensure that they possess such technical qualifications and hold the

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[118] See *Tygard, supra* at pp 276-7. In that regard, the former "exclusivity" requirement for such services was ultimately removed by amendment. See also *Aero Realty Corp v Clinton County*, 73 Mich App 102, 104-6; 250 NW2d 559 (1976) and *Avis Rent-A-Car Sys, Inc v City of Romulus*, 65 Mich App 119; 129-30; 237 NW2d 209 (1975), *aff'd sub nom Avis Rent-A-Car Sys, Inc v Romulus Community Schools*, 400 Mich 337; 254 NW2d 555 (1977).

[119] See *Avis Rent-A-Car Sys, Inc, supra* at p 124.

required certificates, permits, licenses, and ratings to conduct . . . [the hangars'] business activities on the Airport"; and "maintain close supervision over its employees to assure a high standard of service to . . . [the hangars'] customers." In that regard, the leases require Petitioner, its controlled subtenants, and other sub-lessees to provide the NRAC "[a]t the commencement of the term of this Lease . . . with written notice of all activities authorized . . . which Lessee conducts upon the Leasehold premises, **and . . . with verification of all necessary certification to conduct such uses**" and reserve to the NRAC the "right to complain" to Petitioner, its controlled subtenants, and other sub-lessees "as to the demeanor, conduct and appearance of the Lessee's employees, invitees and those doing business with it, whereupon the Lessee **shall** take all steps **necessary to remove** the cause of the complaint." [Emphasis added.] The Minimum Standards also provide, among other things, that:

(i) "[t]hese Standards shall establish the minimum requirements to be met as a condition for person conducting or proposing to conduct aeronautical activities on the Cherry Capital Airport";

(ii) the NRAC's "goal in adopting these Standards is **to encourage the development of quality aeronautical services and** to **make the airport available for aeronautical activities on fair and reasonable terms without unjust discrimination** in accordance with FAA Grant Assurances";

(iii) an aeronautical activity or service is "any activity which involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations";

(iv) "[t]he such right or privilege, however, shall **not** be construed in any manner as affording the Operator any exclusive or continuing right of use of the premises or facilities of the Airport, other than those premises which may be leased exclusively to the Operator for the term of the lease, and then **only to the extent provided in the written agreement**";

(v) the NRAC "reserves the right to lease an existing facility or any portion of an existing facility to a specialized aviation service operator in order to maximize facility use and business opportunities . . . at [the NRAC's] sole discretion . . .";

(vi) the NRAC reserves the right to designate from time to time the specific areas where individual aeronautical services or a combination of aeronautical services may be conducted, **and to determine whether or not there is sufficient, appropriate, or adequate space at the proposed site to meet the minimum requirements established herein**";

(vii) "[w]ith regard to an existing lease or concession agreement, all conditions **not** meeting these Minimum Standards shall be considered nonconforming";

(viii) "[a]ll improvements constructed on the Airport, other than trade fixtures, **shall become part of the land and belong to . . . [the NRAC]** upon expiration, termination, or cancellation of the lease agreement between the Operator and . . . [the NRAC]

covering such improvements, **except as otherwise specifically negotiated in lease agreements between Operator and . . . [the NRAC]**";

(ix) "[c]ross-utilization of personnel between aeronautical services **may be permitted to the extent that** personnel qualifications and licensing requirements and the applicable operating hours of these Standards are met";

(x) "Operator shall permit . . . [the NRAC] to enter upon its leased premises at any reasonable time **for any purpose necessary, incidental to, or connected with** the Operator's performance of its obligations **with respect to these Standards** or the terms of any operating agreement . . .";

(xi) "[t]he rates or charges for any and all activities and services of Operator shall be determined by the Operator, and **subject to the further requirement** that all such rates or charges shall be **reasonable and be equally and fairly applied to all** users of the services";

(xii) "Operator **shall adhere** to the highest ethical and aviation service community standards in the conduct of its activities"

(xiii) "each Specialized Aviation Service Operator shall provide and maintain an office located upon the Airport **which shall be available to the public by appointment or during business hours posted** in a prominent place at the Operator's place of business";

(xiv) "[t]he office **must include** a waiting area for the public with appropriate furnishings and rest rooms as required by the State Construction Code or the County Construction Code Office, unless adequate facilities currently exist, **as determined by . . . [the NRAC]**";

(xv) "[o]ffices **shall contain** an adequate amount of interior floor space to appropriately conduct the business it is intended for **and shall be suitably provided with** heating and air conditioning, as appropriate";

(xvi) "[t]he Operator shall conduct its business operations strictly within the areas assigned to it by the . . . [NRAC]";

(xvii) "[t]he Operator **shall lease or construct hangar facilities** for aircraft storage/display space, public lounge, public restrooms, and the provision of access to a telephone . . . . [**and**] **shall also lease sufficient land** from the Commission in order to locate paved private auto parking; a paved pedestrian walkway . . . .",[120]

(xviii) "Operator **shall provide** sufficient shop space, equipment, supplies, and inventory of aircraft parts . . . . [**and**] **shall provide** emergency aircraft recovery services and equipment necessary to promptly remove disabled general aviation aircraft of the largest type normally expected to use the Airport from the airfield':

(xix) "Operator shall have its premises open and services available during regular, posted business hours . . . . [**and**] **shall make** provisions for someone to be in attendance in the office at all times during the posted operating hours";

(xx) "Operators who do **not** post regular business hours **shall provide** for an adequate means of contacting the Operator to arrange an appointment (e.g., cellular phone, answering service, voice mail, pager, etc.) **and must agree** to contact the potential customer no more than 24 hours after the initial service inquiry";

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[120] According to the testimony, the NRAC "dictates" the size of the leasehold premises.

(xxi) "[i]f the Operator is an FAR Part 145 approved Repair Station, Operator **must possess all** of the tools and equipment **necessary to maintain** such certification **and shall provide** evidence of FAA certification to the . . . [NRAC]"; and,

(xxii) "[t]he Operator shall employ, and have on duty during the appropriate business hours, trained personnel in such numbers as are required to meet these Standards in a **safe and efficient manner currently certified** by the FAA **with ratings appropriate to the work being performed** and holding an airframe and power plant (A&P) rating . . . . [and] the Operator **shall also have available or on-call** at least one person who holds an Aircraft Inspector (IA) rating.

As demonstrated herein, the NRAC has through its leases and the applicable Minimum Standards not only established minimum standards for the provision of aircraft and aircraft radio maintenance services (i.e., trained certified/licensed employees, employee supervision, demeanor/appearance of employees and customers, office construction, adequate office space, necessary equipment, reasonable fees, non-discriminatory treatment of customers, and safe, efficient services meeting the "highest ethical and aviation service community standards," but also provided for oversight of those services. With respect to the minimum hours of operation, Petitioner, its controlled subtenants, and other sub-lessees do, as also demonstrated herein, submit to the NRAC and post regular business hours even though the NRAC does not require the posting of regular business hours.[121] Nevertheless, the NRAC requires Petitioner, its controlled subtenants, and other sub-lessees to be on call to respond to emergencies, as appropriate, and to other customers within 24 hours of that customer's initial inquiry and said "on-call" requirement is sufficient to satisfy the minimum hours of operation otherwise necessary for the operation of a concession. As a result, Petitioner through its controlled subtenants and other controlled sub-lessees provides non-discriminatory maintenance services to the general public (i.e., the customers of the controlled subtenants, specifically, Cherry Capital Aviation Inc., and other sub-lessees, specifically, Evans Avionics) that are customary and needful for the operation of the Cherry Capital Airport.

Based on the above, the Tribunal concludes that the subject properties' exempt status and TCV, SEV, and TV for the tax years at issue are as listed in the Introduction Section of this Proposed Opinion and Judgment (POJ).

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[121] The NRAC may not require the posting of regular business hours. It does, however, "encourage" said posting.

Finally, Petitioner filed a Motion on March 9, 2017, to both amend its Petition and "clarify that recovery of . . . taxable costs and attorney's fees [requested in its petition] is warranted as a result of four recent cases adjudicated by the Tax Tribunal with other concessionaires at the same airport." Said contention was, however, inaccurate. In that regard, the March 17, 2017 Order indicated that:

> . . . there were six (6) cases recently resolved by the Tribunal relating to hangars at the same airport. Those cases were . . . pending in the Tribunal's Small Claims Division and are **not** precedential.[122] Additionally, **none of those cases involved**, contrary to Petitioner's contentions, **concessionaires**. [Emphasis added.]

Notwithstanding the above, "the granting of costs and attorney fees are within the discretion of the Tribunal" and the Tribunal, in exercising such discretion, generally looks to whether the defense was frivolous or imposed for any improper purpose.[123] As for the instant case, Respondent's defense was neither frivolous nor imposed for any improper purpose. More specifically, the concession issue had not been litigated with respect to other recent hangar cases involving the same airport and the resolution of that issue did, in fact, require a hearing to address, among other things, the *Tygard* considerations with respect to "minimum hours" and "specific obligations." As such, the Tribunal concludes that Petitioner's request for costs and attorney fees should be denied, as no good cause has been shown to justify any such award in this case.

PROPOSED JUDGMENT

This is a proposed decision and not a final decision.[124] As such, no action should be taken based on this proposed decision until a final decision is issued by the Tribunal.

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.

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[122] See MCL 205.765. In that regard, none of the cases were designated as precedential by the Tribunal.
[123] See TTR 209(1). That rule, although recently amended to remove the "prevailing party" limitation, is silent as to the standards (i.e., frivolous, etc.) that are to be applied in making such determinations and, as such, the Tribunal looks to the Michigan Administrative Procedures Act ("MAPA") and the Michigan Court Rules ("MCR"). See TTR MCL 24.323, and MCR 2.114. See also *Aberdeen of Brighton, LLC v City of Brighton,* unpublished opinion *per curiam* of the Michigan Court of Appeals, issued October 16, 2012 (Docket No. 301826).
[124] See MCL 205.726.

3. Issue an Order vacating the POJ and ordering a rehearing or such other action as is necessary and appropriate.

EXCEPTIONS

This POJ was prepared by the Michigan Administrative Hearings System. The 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). Exceptions are **limited** to the evidence submitted prior to or at the hearing 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.[125]

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.

By Peter M. Kopke

Entered: July 10, 2017
pmk

[125] See MCL 205.726 and TTR 289(1) and (2).