



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

MJM Flying LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 21-001024

City of Traverse City,
Respondent.

Presiding Judge
Peter M. Kopke

SUMMARY OF PREHEARING CONFERENCE

SCHEDULING ORDER

NOTICE OF VIDEO CONFERENCE HEARING

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER REQUIRING RESPONDENT TO SUBMIT INFORMATION

A Prehearing Conference was held on June 16, 2022. David A. Cvengros, Esq. appeared by telephone on behalf of Petitioner. Stephanie Simon Morita, Esq. appeared by telephone on behalf of Respondent. Based on the discussions, a scheduling order has been established and a video conference hearing, via **Microsoft Teams**, has been set for:

HEARING DATE:	August 15, 2022. The hearing shall continue on August 16, 2022 , as necessary.
HEARING TIME:	9:00 a.m.
TEAMS HEARING LINK:	Click here to join the meeting +1 248-509-0316,,895466829# United States, Pontiac Phone Conference ID: 895 466 829#
PARTICIPANTS' GUIDE:	https://bit.ly/34fBXnN

This is an important legal document. Please have someone translate the document.

Este es un documento legal importante. Por favor, haga traducir este documento.

এটি একটি গুরুত্বপূর্ণ আইনি দলিল, অনুগ্রহ করে কেউ দলিলটিকে অনুবাদ করুন।

هذا هو وثيقة قانونية هامة يرجى لديك شخص تترجم الوثيقة.

Ito ay isang mahalagang legal na dokumento. Mangyari lamang na magkaroon ng isang tao isalin ang dokumento.

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
MICHIGAN TAX TRIBUNAL

611 W. OTTAWA ST • P.O. BOX 30232 • LANSING, MICHIGAN 48909-8195 • 517-335-9760

This hearing is open to the public and this notice is provided under the Open Meetings Act. Any participant or member of the public wishing to attend this hearing **must** click on the “Teams Hearing Link” provided above to gain access to the hearing.

PREHEARING CONFERENCE SUMMARY

- I. SHOW CAUSE HEARING: N/A
 II. VALUATION INFORMATION:

A. The true cash value (TCV), assessed value (AV), and taxable value (TV) for each parcel and tax year at issue as established by the Board of Review:¹

Parcel Number	Year	TCV	AV	TV
28-51-898-580-00	2021			
28-51-898-580-00	2022			

B. The parties’ contentions of TCV, state equalized value (SEV), and TV for each parcel and tax year at issue:²

Parcel Number: 28-51-898-580-00

Year	Petitioner’s Contentions			Respondent’s Contentions		
	TCV	SEV	TV	TCV	SEV	TV
2021	N/A	N/A	\$0.00			
2022	N/A	N/A	\$0.00			

C. Amounts in dispute for the tax years at issue:

Parcel Number	Year	SEV	TV
28-51-898-580-00	2021		
28-51-898-580-00	2022		

¹ The parties’ Prehearing Statements do not provide the property’s assessments for either the 2021 or 2022 tax years. Although both the original and amended petitions indicate the property’s assessment as established by Respondent’s 2021 March Board of Review, said indication is incorrect as follows:

Tax Year	True Cash Value	Assessed Value	Taxable Value
2021	\$60,700	\$60,700	\$60,700

More specifically, assessed value (AV) is ½ of TCV and TV cannot be greater than the AV or State Equalized Value. See Article IX, Section 3 of the Michigan Constitution and MCL 211.27a(2)(b).

² Respondent’s Prehearing Statement also fails to provide Respondent’s contentions of value for either tax year based on Respondent’s claim that Petitioner is appealing the assessment of a non-existent parcel that was, as correctly indicated by Respondent, addressed by the Tribunal with the April 18, 2022 Order denying Respondent’s Motion to Dismiss, which was issued after the filing of Respondent’s March 21, 2022 Prehearing Statement and resulted in the filing of an amended Petition and an amended Answer. See also the Tribunal’s May 2, 2022 Order denying Respondent’s Motion for Reconsideration.

D. TAX INFORMATION: Petitioner claims that the property’s taxes for the 2021 tax year have been paid. Respondent again argues that Petitioner appealed a “non-existent parcel.”

III. FACTUAL STATEMENT OF CLAIMS:

A. Classification of property for the tax years at issue:

Parcel Number	Classification
28-51-898-580-00	Commercial Real

B. Proposed highest and best use (“H&BU”) for the tax years at issue:

Parcel Number	H&BU
28-51-898-580-00	Commercial Improved

C. The property’s TCV and TV are at issue for the tax year under appeal.

D. Petitioner’s claims or counterclaims: “Petitioner does not use the parcel for a commercial purpose/business conducted for profit”

E. Respondent’s claims or counterclaims: “Petitioner claims that the subject property, a privately owned and occupied airplane hangar and associated improvements on leased (from the airport) land, should be exempt pursuant to a non-existent statute MCL 211.27m, as well as MCL 211.181. Respondent maintains that the appealed parcel does not exist and therefore no relief can be granted to Petitioner. Further, and even if the parcel did exist, the property should not be exempted from taxation due to the fact that the hangar and associated improvements are privately owned and occupied, and Petitioner does not otherwise meet the statutory requirements to be exempt under the law.”
[Emphasis added.]

IV. PENDING MOTIONS OR DISCOVERY:

A. Motions:

On May 23, 2022, Petitioner filed a Motion requesting that the Tribunal grant summary disposition for Petitioner under MCR 2.116(C)(10) claiming that the property “is exempt from taxation pursuant to MCL § 211.7(m) and is further not subject to the Lessee-User Tax under MCL § 211.181(1) because it is not a business conducted for profit.” Petitioner also attached to the Motion, among other things, the Affidavit of Shelly A. Ashmore, CPA indicating that Petitioner had “no reported income for the years 2019 and 2020” and the Affidavit of Michael Miller indicating that: (i) he is Petitioner’s “sole member,” (ii) Petitioner “owns the parcel of property at issue,” (iii) “the property at issue includes an airplane hangar in which [Mr. Miller] store[s] a Cessna 180 (single engine) owned by [Petitioner],” (iv) Petitioner “conducts no business, has no income and is funded personally by [Mr.

Miller],” and (v) “100% of the flying performed with the subject airplane is for personal use/enjoyment.”

Respondent filed a Response to the Motion on June 13, 2022, claiming that the Motion “should be denied and instead summary disposition should be granted to Respondent pursuant to MCR 2.116(I)(2), because due to Petitioner’s own admissions and the evidence supported by affidavit, Petitioner owns the property and therefore cannot obtain tax-exempt status under MCL 211.7m, and uses the property in connection with a business conducted for profit, and as such would also be disqualified from obtaining tax-exempt status under MCL 211.181(1).” Respondent also attached to their Response the Affidavit of Polly Cairns, Assessor, which indicates that the hangar or, more specifically, the airplane stored in the hangar was used in connection with a business for profit.

The Tribunal has reviewed the Motion, the Response, and the case file and finds that there is no specific Tribunal rule governing motions for summary disposition. Thus, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.³ In this case, both parties move for summary disposition under MCR 2.116(C)(10). Summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. Under subsection (C)(10), a motion for summary disposition will be granted “when the affidavits or other documentary evidence, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and the moving party is therefore entitled to judgment as a matter of law.”⁴ The Michigan Supreme Court has also established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party.⁵ The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.⁶ The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.⁷ Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving party may not rely on mere allegations or denials in pleadings but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists.⁸ If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.⁹

³ See TTR 215.

⁴ See *Lowrey v LMPS & LMPJ, Inc*, 500 Mich. 1, 5; 890 NW2d 344 (2016) (citation omitted).

⁵ See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).

⁶ See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

⁷ *Id.*

⁸ See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

⁹ See *McCormic v Auto Club Ins Ass’n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

As for the Motion, the Motion was discussed during the Prehearing Conference with Petitioner claiming that the underlying issue related to whether Petitioner “conducts a ‘business for profit’ at the hangar and not whether Petitioner owned the hangar.” Said claim is, however, erroneous, as clearly indicated in the case cited by Petitioner in support of their case. More specifically, the Tribunal found in MOAHR Docket No. 21-003189 (i.e., *Landes v City of Traverse City*) that a political subdivision, the Northwest Regional Airport Commission or NRAC, owned the hangar based on their overall control of the hangar and not Landes. In that regard, the Tribunal would have ruled against Landes and denied his request for exemption, if it had found that Landes was the “ultimate” owner of the hangar and not NRAC, as the exemption under MCL 211.7m is limited to “[p]roperty owned by . . . a political subdivision [or] a combination of political subdivisions” and Petitioner is neither a political subdivision nor a combination of political subdivisions. Mr. Miller’s claim of ownership may, however, be mistaken like many other pleadings and documents in this case and, as such, there is an outstanding issue of fact relative to Mr. Miller’s purported ownership of the hangar that still needs to be resolved by the Tribunal.¹⁰ With respect to the second issue, the issue is not whether Petitioner conducts a business for profit at the hangar, but whether the hangar is used in connection with a business for profit under the “plain language” of the applicable statute.¹¹ As such, there is, given Ms. Cairns’ Affidavit, another outstanding issue of fact relative to whether the hangar or, more specifically, the airplane admittedly housed in that hangar was used in connection with a business for profit that still needs to be resolved by the Tribunal. Therefore,

B. Discovery: Discovery is closed unless otherwise stated herein.

SCHEDULING ORDER

The Tribunal has determined the hearing in the above-captioned case shall be conducted as a video conference proceeding. Although video conference proceedings via *Microsoft Teams* are generally set up using email addresses, the Tribunal has provided a “Teams Hearing Link” that can be utilized by participants (i.e., attorneys or agents, witnesses, the court reporter, etc.) to “join” the hearing **and the parties or their attorneys or agents are required to provide that link to their participants** so that they can **timely** “join the hearing.”

The Tribunal has also provided a link to *MOAHR MTT Guide for Participants for the Conducting of Entire Tribunal Video Conference Hearings*. Participants **should review**

¹⁰ By way of example, Mr. Miller also claims in his Affidavit that he is the Petitioner in this case because he is the sole member of the limited liability company. Said claim is, however, also contrary to law, as Petitioner is a legal entity and the assigned lessee on the lease with the NRAC for the use of the underlying land as well as the owner of the instant airplane.

¹¹ See MCL 211.181(1). See also *Spartan Stores, Inc v City of Grand Rapids*, 307 Mich App 565, 569; 861 NW2d 347 (2014) (i.e., “a reviewing court should focus first on the plain language of the statute in question”).

the Guide **prior to the hearing**, as participants **are required to comply** with the requirements of the *Guide*, as said requirements will facilitate the conducting and transcription of the scheduled hearing. The **parties or their attorneys or agents** are also **required** to provide the link to the *MOAHR MTT Guide for Participants to their participants* so that they are **aware of and can comply with** those requirements.

- I. **August 1, 2022**, is the final date for the parties to submit their witness and exhibit lists **and** exhibits, with the exception of rebuttal witnesses and exhibits, to the Tribunal by **e-filing or email** and the opposing party or parties by **email**. For the exhibit list, the parties **must use** the form prescribed by the Tribunal. The exhibit list and exhibits **shall be submitted** as provided in the **MOAHR MTT Guide for Participants**. An exhibit will **not** be admitted into evidence unless the exhibit is disclosed and furnished in accordance with this Order (even though admissible) **except** upon a finding of good cause by the Tribunal. The exhibits may be submitted separately or in a single document **provided** that the single document or PDF is **bookmarked** so that each exhibit can be easily accessed.
- II. **August 1, 2022**, is the final date for Petitioner to notify the Tribunal **in writing** of the name and telephone number of the court reporter retained by the parties to transcribe the hearing, as provided in the **MOAHR MTT Guide for Participants**.

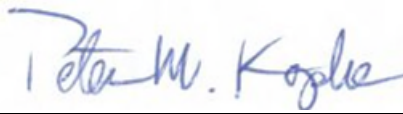
IT IS SO ORDERED.

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

IT IS FURTHER ORDERED that Respondent shall, **within 14 days of the entry of this Order**, inform the Tribunal and Petitioner in writing as to: (i) the property's AV and TV, as established by Respondent's March Board of Review, for the 2021 and 2022 tax years, (ii) the total number of hangar parcels located at the Cherry Capital Airport and assessed by Respondent for the tax years at issue, and (iii) the total number of hangar parcels located at the Cherry Capital Airport that were assessed by Respondent in either Petitioner's name or Mr. Miller's name for the tax years at issue.

Failure to comply with this Order may result in the dismissal of the case or the conducting of a show cause or default hearing.¹²

Entered: June 22, 2022
pmk

By 

¹² See TTR 231(1) and (4). See also *Grimm v Dep't of Treasury*, 291 Mich App 140, 149-150; 810 NW2d 65 (2010) and MCL 205.732(c).

HEARING INFORMATION – PLEASE READ IMMEDIATELY

GENERAL INFORMATION: An impartial hearing will be conducted in accordance with the Michigan Administrative Hearing Rules (R 792.10101-R 792.11289) and the Michigan Administrative Procedures Act, MCL 24.201 *et seq.* The Michigan Rules of Evidence and the Michigan Court Rules may be applicable. A party is expected to exercise proper respect and courtesy toward other parties, witnesses, and administrative law judges, which includes attending the hearing on time, silencing cell phones, and dressing in appropriate clothing for in-person hearings.

REPRESENTATION: A party may be represented by an attorney or other authorized representative of the party's own choosing and at the party's own expense. The Michigan Office of Administrative Hearings and Rules does not recommend or appoint attorneys.

WITNESSES: Parties may present witnesses, if any, identified in the Prehearing Statements, to testify under oath or affirmation at the hearing, subject to cross-examination by the opposing party, and questions by the administrative law judge.

EXHIBITS: The parties shall submit exhibits pursuant to the Guide for Participants.

COURT REPORTER: The parties shall not only provide a court reporter to transcribe the hearing but shall also provide an electronic copy of the hearing transcript to the Tribunal by e-mailing it to taxtrib@michigan.gov. The costs attributable to the court reporter shall be shared equally by the parties. If the parties fail to pay the costs of the transcript to the court report prior to the submission of the transcript to the Tribunal, the court reporter may report this to the Tribunal with the submission of the transcript. As a result, the party or parties who failed to pay the costs associated with the transcript may be held in default.¹³

WITHDRAWAL: If Petitioner no longer wants to continue with the appeal, Petitioner may submit a written request to withdraw the case. Respondent must concur with the withdrawal. The request must be submitted to the Tribunal and served on Respondent at least 14 days before the hearing. Respondent may file a concurrence or objection to the request within 7 days of the service of the request on that party. If Respondent does not timely submit a concurrence or objection to the request will be deemed to be a concurrence to the request. If the request is granted, the case will be dismissed. If a request is not granted or the Tribunal has not notified you that it has been granted, you are required to attend the hearing.

SETTLEMENT: Parties may submit a written agreement settling a case (i.e., stipulation). The stipulation must be on a form made available by the tribunal or shall be in a written form that is in substantial compliance with the tribunal's form and be signed by the parties' attorneys or authorized representatives, if they have attorneys or authorized representatives, or by the parties, if they do not have attorneys or authorized representatives. There is a \$50 fee for the filing of the stipulation. If the stipulation with appropriate filing fee is received by the Tribunal or the parties email a copy of the signed stipulation to the Tribunal by 4:30 p.m. on the business day immediately preceding the day of the scheduled hearing, the hearing may be adjourned. Parties that

¹³ See TTR 321.

email a copy of a signed stipulation to the Tribunal for purposes of adjourning a hearing are also required to submit the original signed stipulation with appropriate filing fee. The stipulation, once submitted, will be reviewed and, if accepted, the Tribunal will issue a consent judgment.

FAILURE TO APPEAR: The failure of a party to timely appear or otherwise participate in a hearing will result in adjournment of the hearing and the holding of that party in default. The defaulted party will be given an opportunity to show good cause for the failure to appear. Failure to respond or show good cause may result in dismissal of the case or the conducting of a default hearing.

REASONABLE ACCOMMODATION: All hearings are conducted in a barrier-free location in compliance with the Americans with Disabilities Act. An individual requiring reasonable accommodation for effective participation in a hearing, including accessible documentation such as braille, large print, electronic or audio reader, should contact the MOAHR by telephone at (517) 335-9760, or complete and submit an accommodation request form at

https://www.michigan.gov/documents/lara/Disability_Accommodation_FORM_v1_2_464_017_7.doc within five (5) days of receipt of the Notice of Hearing to ensure availability of accommodation.

PRIVACY OF INFORMATION: In order to conduct a comprehensive and fair hearing, a party's private or confidential information, such as health or financial information, may be disclosed to the Tribunal and other parties and their attorneys or representatives. The MOAHR will use the private information solely for purposes related to the hearings process. A party may file a motion to request that a public hearing be closed in part or file a motion for protective order to deem certain information private and confidential in order to afford that information special protection.

CONTACT INFORMATION:

Michigan Tax Tribunal

Mailing Address: P.O. Box 30232, Lansing, MI 48909

Phone: (517) 335-9760

E-Mail: taxtrib@michigan.gov

Website: www.michigan.gov/taxtrib

E-Filing: <https://eFiling.apps.lara.state.mi.us>

Office Hours: 8:00 a.m. – 5:00 p.m., our office is closed from 12:00 p.m. – 1:00 p.m.