



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

RACHAEL EUBANKS
STATE TREASURER

MINUTES OF THE MEETING OF THE STATE TAX COMMISSION
For
Monday, October 23, 2023

Okemos Conference Center, Okemos Ballroom
2187 University Park Drive, Okemos, Michigan

And

Virtual Access via Microsoft Teams

Peggy L. Nolde, Chairperson
W. Howard Morris, Member STC

David A. Buick, Executive Director
LaNiece Densteadt, Recording Secretary

The item numbers referred to in the minutes correspond to the agenda items as numbered.

It was moved by Morris, supported by Nolde, and unanimously approved to adopt the minutes of August 22, 2023. (Item 1 on agenda)

Public Comment – Agenda Item 3-21 Only (Item 2 on agenda):

Jackie Cook spoke before the Commission regarding Agenda Item #3, 2023 Classification Appeals. Ms. Cook stated the following: Good morning, I am an attorney for the law firm Novara Tesija Catenacci McDonald & Bass we represent taxpayers in 12 classification appeals and I come before you today on behalf of Fluresh LLC, 41160 Executive Drive, North Country Collection, Peninsula Developments, NWM Organic Farms, NTBS Properties, Laketon Strategic Holdings, RJB Enterprises, American Equipment Group, JSJ Partners, and 2300 E. 10 Mile Road. On June 25, 2023 petitioners submitted classification change petitions to which the assessor's filed responses. We filed replies advising the State Tax Commission of five new or supplemental issues or events relevant to the petitions and I would like to further discuss those five points. First, the Cass County Circuit Court issued an opinion in HRP Cassopolis Holding "cannabis cultivation falls squarely within the plain and ordinary meaning of MCL 211.34c(2)(a)'s definition of an agricultural operation." The HRP Cassopolis opinion was included in the evidence we submitted. HRP operates the property at issue as a licensed cannabis grower, cultivating and growing cannabis indoors as do all the petitioners that I am representing today. HRP also uses their property as a dispensary selling cannabis at retail. The Circuit Court ordered that the State Tax Commission reclassify

HRP's property as agricultural and that opinion is final and not subject to further appeal. According to this Commission "the rule of uniform taxation is the basic requirement in Michigan that underlies the entire property tax structure" and that comes from your Bulletin 17 issued in 2006. The Commission's position in that respect complies with the Michigan Constitution which calls for uniform taxation of property. The uniform taxation is accomplished here by extending that HRP Cassopolis decision to all grow operations. There is something called issue preclusion in legal cases which is also called collateral estoppel and that prevents the Commission from further relitigating the same issue and that is that cannabis cultivation is agricultural against another grow operation and that comes from the Michigan Supreme Court Decision *Monat vs State Farm Insurance* and the site is 469 Mich. 679. It was a case issued in 2003 and what it holds is that a parties required to follow a legal holding when they had a full and fair opportunity to litigate the legal issue when attempting to relitigate the same issue against a nonparty to the original case. The State Tax Commission litigated the Attorney General represented them in court. The court issued a decision so the State Tax Commission must now follow that holding. You have before you today a staff recommendation to disregard the HRP decision, Michigan's Constitution, and your own bulletins but the *Monat* decision structs the Commission legally cannot defend this position that a grow operation is not agricultural in court as you have already been court ordered to treat a grow operation as agricultural. As a party to that case the State Tax Commission must follow it and that is supported by Michigan Court Rules 7.114c as well. Second, the Michigan Department of Treasury which the State Tax Commission is a part of recently adopted the position that growing cannabis is agricultural production, so the petitioner calls the State Tax Commission's attention to Revenue Administrative Bulletin 2023-09 which was just approved July 19, 2023. We provided a copy of it in our evidence. The Department takes the position "the growing of marijuana generally qualifies for the agricultural production exemption" and that is under MCL 205.54a and 205.94. An RAB "states the official position of the Department it has the status of precedent in the disposition of cases unless and until revoked or modified it maybe relied upon by taxpayers in situations where the facts, circumstances and issues presented are substantially similar to those set forth in the bulletin." That also comes from your Department's RAB 2016-20. This Commission is within the Department it must also follow the RAB's. RAB 2023-09 is interpreting the Michigan Sales and Use Tax Act while these petitions involve the interpretation of the Michigan Property Tax Act, but the STC is an arm of the Department cannot ignore the Department's position on cannabis grow operations and that they are inherently agricultural. It is certainly not uniform for the State of Michigan to treat the same operation as agricultural in one tax circumstance and but not in another. This Commission is responsible for the uniform administration of property tax laws across the State of Michigan. Here you have a situation where identical properties used for cannabis grow operations across the State are not being treated uniformly by various cities and townships. Some are classed agricultural, some are classed commercial, and some are classed industrial and it's this Commission's job to provide guidance and uniformity in this respect and make sure they are all treated equally. Third, growing plants is not a commercial purpose that should be classified commercial. Some of the assessors and there are six jurisdictions involved in these appeals dedicate much of their brief to characterizing growing cannabis as a commercial use. The assessors note cannabis is considered "a commercial product or commercial commodity". The assessor's characterization of what is commercial however perverts what the legislature intended when defining the difference between the classes under 34c. The legislature created three mutually exclusive categories for business related developed properties: agricultural,

commercial, and industrial. Any developed property used for any business purpose must fit within one of those three classes. The agricultural classification is for, and this comes from the State Tax Commission “commercial production of an agricultural commodity” not for agricultural activities that are hobby. So, what the Commission was saying in that bulletin issued in 2018 is that agricultural classification is not for hobby farms. There has to be some sort of commercial production which means the farmer, the grower is producing a crop to be sold to make money. Of course, that is involved here it is just as it is involved in any other farm. So, in looking at the businesses at issue here you have to look at the activities conducted to determine which of three business classes they fit within. Are they involved in the commercial production of an agricultural commodity that would be classified agricultural. Are they running a production facility that combines various ingredients and components converting and changing them into a product that can be sold to an end user that would be an industrial use. Or are they selling final products to an end user that would be a commercial use. In Michigan now you have three types of licensed cannabis businesses. You have growers and their licenses say they are allowed to cultivate marijuana and sell it or otherwise transfer marijuana to marijuana establishments. A marijuana grower is like any other agricultural operation in Michigan such as a wheat farm seeds are planted, cultivated, harvested and they are sold as a commercial product. The growers are authorized by law to sell this commercial product to production facilities that will then use it as an ingredient to combine with other products to sell to end users or they may sell their commercial product or crop to dispensaries which are licensed to then sell that product to end users. In this respect there is no difference between the grain farmer and the marijuana businesses. The grain farmer can sell their grain to a bread factory which is then using it and combining it with different ingredients to produce a product that can be sold to end users that’s a factory and the other manufacturing plant. The grain can be sold directly to a feed store where it is packaged and then sold for horses to eat. It is sort of the same thing, and that sort of end use sale is a commercial use. There is no difference between the grower and the wheat farmer both are engaged in agricultural production and their property should both be treated as agricultural. The assessor’s arguments that cannabis is a commercial product, and that the growth operation should be classified commercial that this interpretation completely disregards that the intent of every agricultural operation in the State of Michigan is to sell a commercial product. It matters not whether the crop is wheat or cannabis both the wheat farmer and the cannabis grower in the business of growing commercial products to be sold in their agricultural production. Fourth, zoning does not dictate a properties tax classification. Some of the assessor’s state that this Commission should consider the properties zoning when determining its tax class. According to the Commission however “zoning of the property does not dictate the classification of a property” and this is from the Commission’s property classification manual issued in 2018 and we provided a copy of in our evidence. This aligns with HRP Cassopolis which did not consider the properties zoning in holding the cannabis grow operation should be classified agricultural. Property class for tax purposes under 34c is a method for treating similar properties across the State the same. In contrast, zoning districts are adopted by local units of government pursuant to the Michigan Zoning and Enabling Act and have set forth the allowable uses of a property in that jurisdiction. There is no uniformity in zoning across the state. The cities and townships can sort of do what they want within the zoning laws. But zoning varies from jurisdiction to jurisdiction. Zoning as the State Tax Commission has correctly determined does not have any impact on tax classification. Fifth, petitioners grow plants in soil so as demonstrated by our statement of facts. The petitioners grow plants in soil this is supported by pictures of pots of soil in the

statement of facts. Some of the assessors incorrectly infer that the petitioners utilize the hydroponic method of growing plants in water. There is one exception among the 12 petitions NWM Organic Farms does utilize water to grow plants but as we thoroughly briefed in the evidence submitted to the Commission under either method of growing plants whether soil or water, they are still growing plants and it is inherently agricultural production. That is true regardless of whether it is tomatoes or cannabis that is being grown. For these reasons and based on the other facts of law discussed in our written evidence we respectfully request that the Commission reject the staff recommendation proposed and grant the correct property classifications to agricultural.

Seth O'Loughlin spoke before the Commission regarding Agenda Item #3, 2023 Classification Appeals. Mr. O'Laughlin stated the following: Hallahan & Associates represents Harrison Township, City of White Cloud and City of Muskegon in these various classification change appeals. First off, I appreciate the Commission taking a thorough and reason review of our submission and I would hope to not repeat anything that has already been briefed. I would like to start however by saying that it is worth putting these applications for classification change in context to the fact that at the same time there are Michigan Tax Tribunal appeals pending where the same taxpayer is saying wait, we are actually exempt as eligible manufacturing personal property. Seems difficult to me to say on one hand we are agriculturally classed but on the other we are actually manufacturing property. I do not know how it is possible to hold those in the same thought. Moreover, members of the Commission I think that the HRP Cassopolis class case is not binding here. Collateral estoppel only applies when it is the same parties, or their privies and I do not believe that is the case here. Moreover, I think that when considering what this classification change is it is not really about the classification it is about the exemption from taxation that will follow from this. When marijuana was legalized in the State of Michigan one of the main points by components was that this will produce tax revenue. Tax revenue for local units, tax revenue for the State, tax revenue that will offset the related legalization and now at the same time when the law has not been changed to say what we are actually saying that this property should be exempt it would be a stretch for this Commission to create new law to act as the legislature and say we are in fact changing the statute to exempt something that was passed with the intent of increasing taxes and unless the Commission has any questions about anything I have nothing else to add.

Dennis Warchuck spoke before the Commission regarding Agenda Item #3, 2023 Classification Appeals. Mr. Warchuck stated the following: Good morning, I would like to add some comments regarding my classification appeal 23-012. The property in question is roughly 40 acres made up of around 11 acres of tillable land and around 29 acres of woodland. Of the woodland around 11 acres are being actively farmed for maple syrup with a river, driveway, and other wooded area. So based on this over 50% is being actively farmed year after year and would be considered agricultural. Next, I would like to do a quick explanation of our journey to try and get our property reclassified. It started last year by talking to a local assessor and then going to the March Board of Review. I showed numerous pictures of our maple syrup operation from our maple trees being tapped to the evaporation process. We were denied by the Board of Review with no clear reason why and rejected by the STC because we had no evidence of farming. I didn't understand how there was no evidence because I submitted a history of our maple syrup operation, a tree count, and numerous pictures and so we filed a case with the Circuit Court. During the brief process

and court hearing I learned that the judge did not rule the property is agricultural but only the STC violated the statute of law. The judge did confirm that maple syrup operation is farming when he said, "the court has to look and see if there is a violation of the Constitution or statute. Well, if there is anything related to the statute, it could have been at the local level where, for instance these types of operations are under the law are farms maple syrup operations even if it is the month of March which is a big month for it, they are still farms there is no question about that." I also learned that the STC could void our photographs as evidence since we didn't give a proper foundation for our photographs. Next, I will read a section from the judges' final remarks which explains what he thought was needed to do to try again in the future i.e., this year "I think what it comes down to was the weight of the evidence. For instance, I look for –at, let's say, someone submits to the Court an image from Facebook. Let's say it's dated July 9th. Whatever the situation may be. Well, was it, actually taken July 9th? Is it an accurate – fair and accurate depiction of what's going on? And it's not a matter of me – if I were the individual seat – seated –hear -- hearing this – this stuff before the Commission. Let me – let me put it differently. Let me put a little bit differently. It's – it comes down to whether it has – carries the weight; and when I see something like that, for instance, comes off of Facebook or from a third part, well, wait a second, it may be admissible, but does it carry the day? Does it carry the evidence – the burden that has to be established by the moving party, in this case, the Appellants? And, what I think it comes down to is I am not doubting that they harvest maple. I'm not doubting that 11 acres is tillable land. But the Commission didn't buy it because I think again there was insufficient evidence. And what that means, down the road is you want to reclassify the property again, well, you have a map; you have all the photos; you have everything spelled out; and it's not a Facebook picture. I took the photograph. Here is a picture of the maple trees. Here's a picture of our operation. Oh, by the way, I have a video of this. That would go, I think, more to the Appellant's side here." So taken the judges advice I printed sworn statements, affidavits, and foundation information from neighbors, friends, family and ourselves for the photographs and other information for the evidence. I took this information and evidence along with the court transcript to the 2023 March Board of Review and was rejected for no reason of why maple syrup operation is not farming. After the Board of Review, I got a sworn statement from our tax preparer stating that we made \$25,000 or less in annual gross wholesales of maple syrup. I also got a sworn statement from one of our buyers to show that we are selling maple syrup. I got a report stating what crops are harvested on the tillable land. I also tried to ask my local assessor about this property and his email response was I have your parcel listed as residential based on the fact it only contains 27% tillable soil and yes, the parcel does potentially have more than one use but according to the State Statute a parcel is to be classified by best and highest use and since the parcel contains 73% wooded acreage to me, I am classifying it as residential." I ask myself don't you have to have woods to have a maple syrup operation and for him if all wooded acres is residential then how do you have a maple syrup operation that is in the statute and the law. I have one question and two requests the question is can I submit a video like the judge mentioned and the two requests are please review the information yourself especially the judges' final remarks stating that maple syrup operations is indeed farming and what he thought we should do this time and we did exactly what he said. Two, if you deny me, please give me a detailed information as to why so I can submit the correct information to meet the requirement. Thank you.

It was moved by Morris, supported by Nolde, and unanimously approved to adopt staff's recommendations for 2023 classification appeals 23-001, 23-002, 23-005 through 23-016 and 23-029 through 23-031 and approved the postponement of 23-003, 23-004, 23-017, 23-018, 23-019, 23-020, 23-021, 23-022, 23-023, 23-024, 23-025, 23-026, 23-027, and 23-028 appeals to the November 14th meeting. ([See attached link for file identification](#)) (Item 3 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved Bulletin 12 of 2023 Property Tax Appeal Procedures for 2024. (Item 4 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved Bulletin 13 of 2023 Property Tax and Equalization Calendar for 2024. (Item 5 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved Bulletin 14 of 2023 Interest Rates on Michigan Tax Tribunal Judgments. (Item 6 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved Bulletin 15 of 2023 3rd Quarter Certified Interest Rates. (Item 7 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved Bulletin 16 of 2023 Inflation Rate Multiplier for 2024. (Item 8 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved Bulletin 17 of 2023 Solar Energy Facilities. (Item 9 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved the Solar Energy Facilities Taxation Act Frequently Asked Questions. (Item 10 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved Form 6052 – Application for Solar Energy Facility Exemption Certificate. (Item 11 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved to adopt the 2024 System Economic Factors for Electric Distribution Cooperatives. (Item 12 on agenda)

The STC recognized the following 5 new Michigan Master Assessing Officers (MMAO): Benjamin Griffin, Jacob Liberati, Lyndsey Shembarger, Joseph VanHassel, and Jan Ziozios. The STC also recognized Megan VanHoose who achieved the Certified Assessment Evaluator designation from the International Association of Assessing Officers and was given the designation of MMAO. (Item 13 on agenda)

Chairperson Nolde stated the following: Congratulations and thank you for all you do for this profession. We have some new old-fashioned level 4's or the MMAO. Congratulations again.

Commissioner Morris stated the following: Let the record show and I am going to speak for my colleague here we extend a hearty congratulations for the success on their exam and we commend them for seeking a higher-level certification.

Executive Director Buick indicated for the December meeting a list of who passed the other certifications will be available for the Commission's review.

It was moved by Morris, supported by Nolde, and unanimously approved to adopt the official order to certify and return the 2018 Assessment Roll for Frankenlust Township, Bay County. (Item 14 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved to adopt the official order to certify and return the 2020 Assessment Roll for Frankenlust Township, Bay County. (Item 15 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved to adopt the official order to certify and return the 2021 Assessment Roll for Frankenlust Township, Bay County. (Item 16 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved to adopt the official order to certify and return the 2022 Assessment Roll for Frankenlust Township, Bay County. (Item 17 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved to adopt the official order to certify and return the 2021 Assessment Roll for London Township, Monroe County. (Item 18 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved to adopt the list of OPRA Qualified Local Government Units. (Item 19 on agenda)

It was moved by Morris, supported by Nolde, and unanimously approved to adopt the staff recommendations on the **Exemptions Special Items Agenda**. (Item 20 on agenda) ([Exemptions Special Items Agenda Link](#))

It was moved by Morris, supported by Nolde, and unanimously approved to adopt the staff recommendations on the **Exemptions Agenda**. (Item 21 on agenda) ([Exemptions Agenda Link](#))

It was moved by Morris, supported by Nolde, and unanimously approved to adopt the MCL 211.154 petitions on the **Concurrence Agenda**. (Item 22 on agenda) ([Concurrence Agenda Link](#))

It was moved by Morris, supported by Nolde, and unanimously approved to adopt the Michigan Certified Assessing Officer Proposed Program Outline. The new outline adds three chapters which will add six weeks to the schedule and the classes will be held virtually with two in-person exams starting with the January 2024 program. (Item 23 on agenda)

Public Comment (Item 24 on agenda):

No member of the public wished to speak at public comment.

Executive Director Buick indicated he was moving forward with hiring additional staff to fill vacancies within the Department.

The November 14, 2023, Commission meeting is scheduled to take place at the Okemos Conference Center in Okemos A, B & C, 2187 University Park Drive, Okemos. The meeting will also be available virtually via Microsoft Teams. The agenda along with a video and audio link to the virtual meeting will be posted on the State Tax Commission's website at www.michigan.gov/statetaxcommission one week prior to the meeting.

It was moved by Morris, supported by Nolde, and unanimously approved to adjourn the meeting of the State Tax Commission at 9:57 am.

DATE TYPED: October 24, 2023

DATE APPROVED: November 14, 2023

**Peggy L. Nolde, Chairperson
State Tax Commission**

**W. Howard Morris, Member
State Tax Commission**

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