

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

Bonnie J McCord,  
Petitioner,

v

MTT Docket No. 16-001472

City of Clio,  
Respondent.

Tribunal Judge Presiding  
Steven H Lasher

ORDER DENYING RESPONDENT’S MOTION TO DISMISS

ORDER GRANTING SUMMARY DISPOSITION IN FAVOR OF RESPONDENT

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Opinion and Judgment (“POJ”) on August 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 submitted and made specific findings of fact and conclusions of law. The ALJ’s determination that Petitioner failed to state a claim upon which relief can be granted is supported on the record and by the applicable statutory and case law. Therefore,

IT IS ORDERED that Respondent’s Motion to Dismiss is DENIED.

IT IS FURTHER ORDERED that Summary Disposition in favor of Respondent is GRANTED.

IT IS FURTHER ORDERED that the subject property’s taxable value (“TV”) for the tax year at issue is as follows:

**Parcel Number:**

Year	TV
2016	\$326,400

This Order resolves the last pending claim 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.<sup>4</sup>

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."<sup>5</sup> A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.<sup>6</sup> The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.<sup>7</sup>

By Steven H. Lasher

Entered: September 13, 2017  
ejg

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<sup>1</sup> See TTR 261 and 257.

<sup>2</sup> See TTR 217 and 267.

<sup>3</sup> See TTR 261 and 225.

<sup>4</sup> See TTR 261 and 257.

<sup>5</sup> See MCL 205.753 and MCR 7.204.

<sup>6</sup> See TTR 213.

<sup>7</sup> See TTR 217 and 267.

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

Bonnie J. McCord,  
Petitioner,

v

MTT Docket No. 16-001472

City of Clio,  
Respondent.

Administrative Law Judge Presiding  
Peter M. Kopke

ORDER DENYING RESPONDENT’S MOTION TO DISMISS

PROPOSED ORDER GRANTING SUMMARY DISPOSITION IN FAVOR OF  
RESPONDENT

PROPOSED OPINION AND JUDGMENT

On July 19, 2017, Respondent filed a Motion requesting that the Tribunal dismiss the above-captioned case. In the Motion, Respondent contends that:

- i. Petitioner is appealing the subject property’s taxable value for the 2014, 2015, and 2016 tax years based on a claim that construction on the property to replace the damaged “structure” was replacement construction and not new construction.
- ii. The petition indicates that the “fire” damage to the structure was “the result of arson and not an accident or act of God.”
- iii. The Tribunal entered an Order on June 1, 2016, dismissing Petitioner’s assessment appeal for the 2013, 2014, and 2015 tax years and continuing the appeal for the 2016 tax year. The June 1, 2016 Order specifically indicated that the appeal involved a “valuation dispute.”
- iv. Although the petition indicated that Petitioner was appealing the property’s true cash and taxable values for the tax year at issue, Petitioner failed to submit a valuation disclosure, as required by the Tribunal’s September 16, 2016 Prehearing General Call and Scheduling Order. Rather, Petitioner filed notification that no valuation disclosure would be submitted.<sup>1</sup> Further, the Tribunal issued a Prehearing Conference Summary on July 10, 2017, precluding Petitioner from offering a valuation disclosure for admission based on Petitioner’s failure to show good cause at the July 10, 2017 Prehearing Conference to justify said failure.

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<sup>1</sup> The notification was filed based on Petitioner’s misunderstanding of law that the property’s assessed and/or state equalized value was somehow determined in the same way that a property’s taxable value was determined or, more appropriately, calculated. See MCL 211.27a(2).

- v. The property's taxable values for the 2016 and 2017 tax years did not increase more than the rate of inflation, as provided by statute and, as a result, the Tribunal has no "authority" to adjust those taxable values.<sup>2</sup>

Petitioner has filed a response to the Motion on August 9, 2017. In the Response, Petitioner contends that:

- i. "Respondent raises three principal arguments in its Motion to Dismiss: Firstly, that since Petitioner's Property was damaged as the result of arson, it was not an accident or action of God . . . . Secondly, that pursuant to the Order of Partial Dismissal entered by this Honorable Tribunal on or about June 6, 2016, Petitioner's "simple math calculation" is an excessive burden on the Respondent' . . . . And, thirdly, that the taxable value for the Property did not increase more than the allowed 1.003," therefore stating Petitioner's appeal should be dismissed."
- ii. ". . . this Honorable Tribunal has already ruled that Petitioner has timely filed [a] valuation dispute for the 2016 taxable year."
- iii. ". . . contrary to Respondent's claim, this Honorable Tribunal has not determined whether arson is out of the control of the damaged party, and therefore an accident or act of God and it is still necessary and equitable for Petitioner to raise that issue."
- iv. "In 2012, the Original Property was the target of arson. On or about April 29, 2012, the Original Property went up in the largest blaze in Clio history since the 1970s (Exhibit B, Flint Journal article). The fire resulted in a total loss of the structure and contents (Exhibit C, Fire Pictures). It later was determined the fire had been started by two juveniles in the area, and ultimately resulted in two juvenile dispositions/convictions for attempted arson (Exhibit D, Convictions)."
- v. "When the time came to rebuild the structure on the Property, Ms. McCord sought to build exactly what was there before. However, because of advances in construction and safety requirements, Ms. McCord was unable to meet her goal of constructing an exact duplicate of the Original Property, and thus a modified design . . . was necessary and proper."

The Tribunal has reviewed the Motion, the Response, and the case file and finds that Respondent has failed to show good cause to justify the granting of the Motion. Nevertheless, Respondent is entitled to summary disposition, as Petitioner "has failed to state a claim on which relief can be granted."<sup>3</sup> More specifically, a redetermination of the property's taxable value is a "valuation

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<sup>2</sup> The property's assessment or, more appropriately, the property's taxable value is not pending before the Tribunal for the 2017 tax year, as Petitioner did not file a motion requesting the Tribunal's permission to amend its petition to include that tax year on or before May 31, 2017. See MCL 205.737(4) and 205.735a(6). In that regard, the Tribunal has no equitable powers that would permit it to waive statutorily-imposed requirements and deadlines. See *Electronic Data Sys Corp v Flint Twp*, 253 Mich App 538; 656 NW2d 215 (2002).

<sup>3</sup> See MCR 2.116(I)(1) and 2.116(C)(8). Summary disposition under MCL 2.116(C)(10) would also be appropriate, as the parties' submissions show that there is no genuine issue of material fact and that Respondent is entitled to

dispute” and a valuation disclosure would not be required to resolve the instant “valuation dispute” if the construction of the structure constituted replacement construction, as the taxable value for replacement construction would be “equal to the taxable value of the property in the year immediately preceding the year in which the property was damaged or destroyed, adjusted annually” if the replacement construction “is of substantially the same materials as determined by the state tax commission, if the square footage is not more than 5% greater than the property that was damaged or destroyed, and if the replacement construction is completed not later than December 31 in the year 3 years after the accident or act of God occurred.”<sup>4</sup> With respect to Respondent’s other contention, the Tribunal does, in fact, have the authority to “prospectively” correct or otherwise reduce an erroneous taxable value for purposes of adjusting a taxable value that was timely challenged in a subsequent year, as the provisions establishing taxable value, which include, if appropriate, the valuation of replacement construction, are “both mandatory and automatic.”<sup>5</sup> As such, Respondent has failed to show good cause to justify the granting of its Motion.

Further, there is no specific Tribunal rule governing the granting of summary disposition and, as a result, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions or, in the instant case, the pleadings.<sup>6</sup> More specifically, summary disposition under MCR 2.116(C)(8) “tests the legal sufficiency of a claim **by the pleadings alone** . . . . to determine whether the claim is so clearly unenforceable as a matter of law that **no** factual development could establish the claim and justify recovery.”<sup>7</sup> [Emphasis added.] Additionally, “[a]ll factual allegations supporting the claim, and any reasonable inference or conclusions that can be drawn from the facts, are accepted as true.”<sup>8</sup> In the instant case, Petitioner alleges that the structure at issue was damaged as a result of arson, which is defined as an “intentional” act.<sup>9</sup> The applicable statute does, however, specifically define “replacement construction” as “construction that replaced property damaged or destroyed **by accident or act of God.**” [Emphasis added.] As such, the statute at issue requires the damage or destruction to be the result of an “accident” or “act of God” and the Tribunal must “focus” on and give “effect” or apply that language as written given that it is plain and unambiguous.<sup>10</sup> Unfortunately, neither the applicable statute nor the General Property Tax Act within which the statute is located define those terms.

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judgment as a matter of law. See *Smith v Globe Life Insurance Co*, 460 Mich 446, 454-5; 597 NW2d 28 (1999) and *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

<sup>4</sup> See MCL 211.34d(1)(b)(v) (i.e., “after December 31, 2011”).

<sup>5</sup> See *Michigan Properties, LLC v Meridian Twp*, 491 Mich 518, 536-7; 817 NW2d 548 (2012). See also *Michigan Properties* at pp 545-6 and 531-2.

<sup>6</sup> See TTR 215. See also *Averill v. Dauterman*, 284 Mich App 18, 20-1; 772 NW2d 797 (2009).

<sup>7</sup> See *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998) (citing *Eason v. Coggins Memorial Christian Methodist Episcopal Church*, 210 Mich App 261, 263; 532 NW2d 882 (1995)).

<sup>8</sup> See *Smith v Stolberg*, *supra* at p 258.

<sup>9</sup> See ARSON, Black’s Law Dictionary (10<sup>th</sup> ed. 2014) (i.e., “[u]nder modern statutes, the intentional and wrongful burning of someone else’s property (as to destroy a building) or one’s own property (as to fraudulently collect insurance)”). See also MCL 750.72 (i.e., “willfully or maliciously”). See also MCL 750.73 (i.e., “willfully or maliciously”), 750.74 (i.e., “willfully or maliciously”), 750.75 (i.e., “willfully or maliciously”), 750.76 (i.e., “willfully or maliciously”), 750.77 (i.e., “intentionally”), 750.78 (i.e., “willfully or maliciously” and “intentionally”), and 750.79 (i.e., “with the intent to commit arson”).

<sup>10</sup> See *Spartan Stores, Inc v City of Grand Rapids*, 307 Mich App 565, 569; 861 NW2d 347 (2014). See also *Garfield Mart, Inc v Dep’t of Treasury*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d\_\_\_ (2017).

Nevertheless, the Tribunal may look to a legal dictionary to determine the “unique legal meaning” of the terms.<sup>11</sup> In that regard, “accident” is defined by legal dictionaries as “[a]n **unintended** and unforeseen injurious occurrence,”<sup>12</sup> while “act of God” is defined as “[a]n overwhelming, unpreventable event **caused exclusively** by forces of nature, such as an earthquake, flood, or tornado.”<sup>13</sup> [Emphasis added.]

Based on the above, arson is an intentional act that was committed in the instant case “by juveniles.” Said act was not “unintended” or caused “by forces of nature” at least forces of nature contemplated under the statute. As a result, the property was not damaged or destroyed by accident or act of God and, as such, the construction constitutes “new construction” and not “replacement construction.”<sup>14</sup> Additionally, the taxable value of new construction is “the true cash value of the new construction multiplied by 0.50.”<sup>15</sup> In that regard, the construction began in 2013 and was completed in 2014 resulting in the partial valuation of the structure for the 2014 tax year and the final valuation of the structure for the 2015 tax year. Although the completion of construction over a multi-year period creates a problem with respect to the valuation of the additional construction in the subsequent year or years for purposes of calculating a property’s taxable value, the resolution of said problem requires a determination as to the additional construction’s true cash value.<sup>16</sup> Petitioner is, unfortunately, unable to establish that value or, more appropriately, values (i.e., partial construction and additional construction), as Petitioner failed to timely file her valuation disclosure in this case or show good cause to justify said failure.<sup>17</sup>

Finally, the property’s taxable value for the tax year at issue was properly determined, as said value decreased from the prior tax year’s taxable value given the reduction in the property’s true cash value for that tax year.<sup>18</sup> Therefore,

IT IS ORDERED that Respondent’s Motion to Dismiss is DENIED.

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<sup>11</sup> See *Spartan Stores, supra* at pp 574-5. In regard, arson is also not defined in the General Property Tax Act, MCL 211.1 *et seq.*

<sup>12</sup> See ACCIDENT, Black’s Law Dictionary (10th ed. 2014).

<sup>13</sup> See ACT OF GOD, Black’s Law Dictionary (10th ed. 2014). Black’s also indicates that “[t]he definition [of act of God] has been statutorily broadened to include **all natural phenomena** that are exceptional, inevitable, and irresistible, the effects of which could not be prevented or avoided by the exercise of due care or foresight.” [Emphasis added.]

<sup>14</sup> Although this determination would appear to be inequitable as the arson was committed by third parties, the Tribunal does not have, as indicated above, “equitable powers.” Rather, it would be incumbent on the Legislature to broaden the statutory definition of “replacement construction” to include, if it “wants to,” property damaged or destroyed by arson committed by a third party or parties. See *Garfield Mart, supra*.

<sup>15</sup> See MCL 211.34d(1)(b)(iii).

<sup>16</sup> See *Kok v Cascade Charter Twp*, 255 Mich App 535, 543; 660 NW2d 389 (2003).

<sup>17</sup> Although said failure was, as indicated above, the result of misunderstanding of law, said misunderstanding does not justify Petitioner’s failure to timely file the required valuation disclosure, as Petitioner was not only represented by an attorney, but also had notice and a sufficient opportunity to prepare and timely submit her valuation disclosure. See also MCL 205.737(3) (i.e., “[t]he petitioner has the burden of proof in establishing the true cash value of the property”) and TTR 255 (i.e., “a witness may **not** testify as to the value of property **without** submission of a valuation disclosure signed by that witness and containing that witness’ value conclusions and the basis for those conclusions”). [Emphasis added.]

<sup>18</sup> See MCL 211.27a(2)(a) and (2)(b).

IT IS ORDERED that Summary Disposition in Favor of Respondent is GRANTED.

IT IS FURTHER ORDERED that the subject property's taxable value ("TV") for the tax year at issue is as follows:

**Parcel Number:**

Year	TV
2016	\$326,400

**JUDGMENT**

This is a proposed decision ("POJ") prepared by the Michigan Administrative Hearings System. It is not a final decision.<sup>19</sup> As such, no action should be taken based on this decision. In that regard, the Tribunal will, after the expiration of the time period for the opposing party to file a response to exceptions, will review the case file, including the POJ and all exceptions and responses, if any, and:

- a. Issue a Final Opinion and Judgment (FOJ) adopting the POJ as the final decision.
- b. Issue an FOJ modifying the POJ and adopting the Modified POJ as the final decision.
- c. Issue an Order vacating the POJ and ordering a rehearing or such other action as is necessary and appropriate.

**EXCEPTIONS**

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, that 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 with the Motion, the Response, 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 or electronically served on that party (i.e., email), **if** the parties agree to service by email, to file a written response to the exceptions.<sup>20</sup>

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.

Entered: August 10, 2017  
pmk

By Peter M. Kopke

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<sup>19</sup> See MCL 205.726.

<sup>20</sup> See MCL 205.726 and TTR 289(1) and (2).